

Thursday
August 18, 1988



Federal Register

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THE FEDERAL REGISTER WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

- WHEN:** September 13; at 9:00 a.m.
- WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
- RESERVATIONS:** Doris Tucker, 202-523-3419

CHICAGO, IL

- WHEN:** September 19; at 9:15 a.m.
- WHERE:** Room 3320,
Federal Building,
230 S. Dearborn St.,
Chicago, IL
- RESERVATIONS:** Call the Federal Information Center,
Chicago 312-353-5692

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for "Class I" Scotch Spearmint Oil for the 1988-89 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on increasing the quantity of "Class I" Scotch spearmint oil produced in the Far West that may be purchased from, or handled for, producers by handlers during the 1988-89 marketing year which began June 1, 1988. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions and was recommended by the Spearmint Oil Administrative Committee, which is the agency responsible for local administration of the order.

DATES: Interim final rule effective June 1, 1988 through May 31, 1989. Comments which are received by September 19, 1988, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, P.O. Box 98456, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, F&V, AMS, USDA, Room 2522-S, P.O. Box 98456, Washington, DC 20090-6456; telephone: (202) 475-5120.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601-674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus both statutes have small entity orientation and compatibility.

There are approximately nine handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order, and approximately 253 spearmint oil producers in the regulated area. Of the 253 producers, 170 producers hold "Class I" oil (Scotch) allotment base and 143 producers hold "Class III" oil (Native) allotment base. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Spearmint Oil Administrative Committee (Committee), at its July 6, 1988, meeting, unanimously

recommended that the salable quantity and allotment percentage for "class I" Scotch spearmint oil (Scotch oil) for the 1988-89 marketing year be increased. The salable quantity and allotment percentage for that class of oil was published in the March 1, 1988, issue of the Federal Register (53 FR 6129). This revision will increase the salable quantity from 650,131 pounds to 766,387 pounds and increase the salable percentage from 39 percent to 46 percent. This revision is issued pursuant to § 985.51(b) of the spearmint oil marketing order.

The salable quantity is the total quantity of a class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage (which is the salable quantity multiplied by 100 divided by the total of all allotment bases) to the producer's allotment base for that class of oil.

At its August 12, 1987, meeting, the Committee estimated trade demand for the 1988-89 marketing year to be 761,063 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 761,063 pounds. The Committee estimated that 15,703 pounds would be carried-in on June 1, 1988. This amount was deducted from the total supply needed leaving 745,360 pounds as the salable quantity needed. This figure was further reduced by 100,000 pounds which was the amount of Far West Scotch sales estimated to be filled by production from outside the production area. This left a salable quantity needed of 645,360 pounds. This quantity, divided by the total of all allotment bases of 1,667,002 pounds, resulted in 38.7 percent which was the computed allotment percentage. This figure was adjusted to 39 percent and established as the 1988-89 Scotch allotment percentage which resulted in a 1988-89 salable quantity of 650,131 pounds.

The 1988-89 salable percentage of 39 percent, when applied to the current total allotment base of 1,666,059 pounds, gives a 1988-89 salable quantity of 649,763 pounds. Since all growers will either produce their individual salable quantity or fill any deficiencies with reserve pool oil, the total salable quantity which will be available, when this figure is combined with the actual carry-in on June 1, 1988, is 683,644 pounds, and is the total supply available

for the 1988-89 marketing year. Carry-in on June 1, 1988, was 33,881 pounds of Scotch oil, higher than the Committee had estimated.

Currently, the Midwest is experiencing a drought and estimates indicate that a maximum of 50 percent of a normal crop will be harvested there this year. The Committee expects the demand for Far West Scotch oil to increase as buyers of Midwest Scotch oil will substitute Far West oil for Midwest oil. This year, although it is early in the marketing year, a considerable amount of contracting of the 1988-89 crop has occurred. In order to meet the anticipated increase in trade demand, a higher salable quantity and allotment percentage for Scotch oil are required. The Committee recommended increasing the salable percentage by 7 percent, from 39 to 46 percent, thus making an additional 116,624 pounds available to the market. The basis for this recommendation was that when these additional pounds are added to the total supply available of 683,644 pounds, the resulting 800,268 pounds is between the five-year average sales of 758,682 pounds and the highest year of sales of 888,242 pounds. The Committee decided that this figure could meet immediate needs while assuring growers that a burdensome supply would not be put on the market. The Committee therefore recommended that the 1988-89 Scotch salable percentage be increased from 39 to 46 percent resulting in an increase in the salable quantity from 649,763 to 766,387 pounds. This figure added to the June 1, 1988, carry-in of 33,881 results in a total available supply of 800,268 pounds. The following table summarizes the computations used in arriving at the Committee's recommendations.

	Original recommendation, Aug. 12, 1987	Revised recommendation, July 6, 1988
Pounds		
(1) Carry-in	15,703	33,881
(2) Trade demand	761,063	900,268
(3) Desirable carryout		
(4) Salable quantity ¹	645,360	766,387
(5) Total allotment bases for Scotch oil	1,667,002	1,666,059
(6) Allotment percentage ((4 - 5) × 100)	39	46

¹ Salable quantity equals trade demand minus carry-in and 100,000 pounds of Scotch oil expected to be available from outside the production area.

Thus, the Department has determined an allotment percentage of 46 percent should be established for the 1988-89

marketing year. This percentage will make available 766,387 pounds of Far West Scotch spearmint oil to handlers of Far West spearmint oil.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the final rule published in the March 1, 1988, issue of the Federal Register (53 FR 6129), in connection with the initial establishment of the salable quantity and allotment percentage for Scotch oil, the Committee's recommendation and other information, it is found that to amend § 985.208 (53 FR 6129) so as to change the salable quantity and allotment percentage for Scotch spearmint oil, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This final action relieves restrictions on handlers by increasing the quantity of Scotch oil that may be freely marketed immediately; and (2) it should be effective as soon as possible to enable handlers to satisfy current market needs for Scotch oil.

List of Subjects in 7 CFR Part 985

Far West, Marketing agreements and orders, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

PART 985—[AMENDED]

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 985.208 is amended by revising paragraph (a) to read as follows:

Note.—The following provisions will not be published in the Code of Federal Regulations.

§ 985.208 Salable quantities and allotment percentages—1988-89 marketing year.

(a) Class "I" Oil—a salable quantity

of 766,387 pounds and an allotment percentage of 46 percent.

* * * * *

August 15, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-18719 Filed 8-17-88; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

Facility Form Nuclear Liability Insurance Policy; Miscellaneous Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to make several minor changes in the Facility Form nuclear liability insurance policy furnished as evidence of financial protection. The two nuclear insurance pools have submitted endorsements to the Facility Form policy that make available a single insurance policy to cover onsite worker claims. This new Master Worker Policy reflects different rating and underwriting treatment than is utilized in the Facility Form policy. The supplementary insurance provided by the new policy enhances protection to the public since payments under its provisions for routine claims by onsite nuclear workers will not reduce the financial protection for the public under the primary and secondary nuclear liability insurance policies provided as evidence of financial protection under the Price-Anderson Act.

EFFECTIVE DATE: September 19, 1988.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-1289.

SUPPLEMENTARY INFORMATION: On April 27, 1988, the Commission published a proposed rule in the Federal Register (53 FR 15049) requesting comments on endorsements to the Facility Form nuclear liability insurance policy and a new Facility Form Policy submitted to the Commission by two nuclear insurance pools, Nuclear Energy Liability Insurance Association (NELIA) and Mutual Atomic Energy Liability

Underwriters (MAELU). The Facility Form of insurance policy along with endorsements to these policies has been accepted by the Commission as evidence of the financial protection required under section 170 of the Atomic Energy Act of 1954, as amended. The evidence of financial protection accepted by the Commission assures the availability of funds to compensate the public for the financial consequences of a catastrophic nuclear accident.

Effective January 1, 1988, the Pools modified the manner in which coverage was made available to operators of nuclear reactors and others. The change is confined to tort claims by onsite nuclear workers that arise from circumstances unrelated to an extraordinary nuclear occurrence. Financial protection must continue to include coverage for such claims by onsite workers and the revised program the Pools are making available does so by means of a new supplementary insurance policy for tort claims from onsite nuclear workers. The new Nuclear Energy Liability Policy (Facility Worker Form) was effective as of January 1, 1988 and is a part of the Facility Form policy. The new Facility Worker Form covers only the claims of onsite workers first employed in the nuclear industry on or after January 1, 1988 ("new workers"). Claims of all other workers ("old workers") will continue to be covered under present Facility Forms for ten more years, until December 31, 1997, at which time coverage for claims from old workers could be added to the new Facility Worker Form, or be otherwise insured.

Coverage for old workers will be changed by an endorsement to Facility Forms. One such endorsement (Form NE-64) was attached to all Facility Forms issued before January 1, 1988, and Form NE-66 was attached to all Facility Forms issued on and after that date. Both forms allow coverage under the Facility Forms to which they are attached to continue for claims made by old workers on or before December 31, 1997.

The Facility Worker Form is a Master Policy that provides a single aggregate limit of liability shared by insured entities under all Certificates of Insurance issued to provide insurance under the Master Policy. The Master Worker Policy that was issued by the Pools provides a single aggregate liability limit and has been designed as a prototype for a longer term, perhaps continuous, replacement program based on experience. Because the new Master Worker Policy was designed as a prototype, a 5-year term was selected on

the basis of negotiations between the Pools and their insureds. It is anticipated that before the Master Worker Policy expires, a renewal or replacement policy will be developed taking into account the additional recommendations of insureds and others. A Certificate of Insurance was issued under each policy to every facility operator desiring to purchase the coverage. The Master Worker Policy issued by NELIA has a Policy Aggregate Limit of \$124 million; the MAELU Policy Aggregate Limit is \$36 million.

To minimize the need for Certificate holders to apply for reinstatement of the Policy Aggregate Limit as is required by the Commission, the Pools will automatically reinstate up to the limit of \$160 million. The policies can be further reinstated by agreement of the parties.

The supplementary insurance provided by the Facility Worker Form enhances protection for the public since payments under its provisions for routine claims by onsite nuclear workers will not reduce the financial protection for the public under the primary and secondary nuclear liability insurance policies provided as evidence of financial protection under the Price-Anderson Act. Conversely, payments under primary and secondary policies will not operate to reduce the coverage under the Facility Worker Form for routine claims by onsite workers.

It is important to note that the rating procedure applicable to reactors to reflect the risk of a catastrophic accident that presumably would result in a large number of offsite claims is not appropriate to the lesser, routine claims from onsite workers. The premium for the Facility Worker Form will be regulated by the "Industry Retrospective Rating Plan Premium Endorsement" (Form NE-W-1) which reflects the different kind of risk covered by the new policy.

The change in the insurance available from the Pools effective as of January 1, 1988 keeps intact the coverage that has been available to licensees with respect to claims from the public. By providing separate coverage for routine claims from new workers, and eventually from old workers as well, the protection provided to the public, to onsite workers, and to persons who may be liable is enhanced. The Facility Form has been accepted by the Commission as evidence of financial protection from licensees. The Facility Form, as modified by Forms NE-64 and NE-66, and the Facility Worker Form, with its accompanying Certificate of Insurance and premium endorsements, are acceptable to the Commission as

evidence of financial protection required by the Price-Anderson Act.

Only one respondent, American Nuclear Insurers, submitted comments prior to the May 27, 1988 comment expiration date. The comments were editorial corrections to the proposed rule and have been incorporated in the effective rule.

Environmental Impact: Categorical Exclusion

The Commission has determined that this rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) Existing requirements were approved by the Office of Management and Budget approval number 3150-0039.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) the Commission hereby certifies that this rule will not have a significant economic effect on a substantial number of small entities. This rule applies only to nuclear power plant licensees which are electric utility companies dominant in their service areas. These licensees are not "small entities" as set forth in the Regulatory Flexibility Act and do not meet the standards set forth for small businesses in Small Business Administration regulations in 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, that a backfit analysis is not required for this rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 140

Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and 5 U.S.C. 553, the NRC is

adopting the following amendments to 10 CFR Part 140.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

1. The authority citation for Part 140 is revised to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 140.11(a), 140.12(a), 140.13 and 140.13a are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and § 140.6 is issued under sec. 161c, 68 Stat. 950, as amended (42 U.S.C. 2201(c)).

2. Section 140.91, Appendix A, is amended by adding the following endorsements immediately after the existing text to read as follows:

Amendment of Coverage Endorsement for Workers Claims (Facility Form)

NE-64(1/1/88)

Preamble

1. The insurance and rating plan presently used by Nuclear Energy Liability Insurance Association ("NELIA") and Mutual Atomic Energy Liability Underwriters ("MAELU") do not make a distinction between workers claims arising from catastrophic events and those arising from lesser events;

2. NELIA and MAELU believe that the lack of such a distinction will adversely affect their ability to continue to attract from world markets very large amounts of nuclear energy liability insurance for the nuclear industry;

3. NELIA and MAELU want to avoid this potential loss of capacity and to continue to provide nuclear energy liability insurance for workers claims. Accordingly NELIA and MAELU desire to restructure their present insurance programs, including this policy, effective January 1, 1988.

Now, Therefore, the Named Insured and the companies do hereby agree as follows:

1. Definitions

When used in reference to this endorsement:

"This policy" means the policy of which this endorsement forms a part;

"Nuclear related employment" means all work performed at one or more than one nuclear facility in the United States of America or in connection with the transportation of nuclear material to or from any such facility. All of a worker's nuclear related employment shall be considered as having begun on the first day of such employment, regardless of the number of employers involved or interruptions in such employment;

"Worker" refers to a person who is or was engaged in nuclear related employment;

"Workers claims" means claims for damages because of bodily injury to a worker

caused by the radioactive, toxic, explosive or other hazardous properties of nuclear material and arising out of or in the course of the worker's nuclear related employment;

"Extraordinary nuclear occurrence" means an event which the United States Nuclear Regulatory Commission has determined to be an "extraordinary nuclear occurrence" as defined in the Atomic Energy Act of 1954, or in any law amendatory thereof.

2. Application of This Endorsement

This endorsement applies only to such insurance as is afforded by this policy for workers claims which do not arise in whole or in part out of an extraordinary nuclear occurrence.

3. Exclusion of New Workers Claims

This policy does not apply to bodily injury to a worker which arises in whole or in part out of nuclear related employment that begins on or after January 1, 1988.

4. Application of Policy To Workers Claims Not Excluded

With respect to such insurance as is afforded by this policy for workers claims which are not excluded, Insuring Agreement IV does not apply and the following Insuring Agreement IV-A does apply:

IV-A Application of Policy to Workers Claims. This policy applies only to bodily injury (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured not later than the close of December 31, 1997.

5. Availability of Supplemental Insurance

NELIA and MAELU are offering to make insurance under one or more Master Worker Policies available to all holders of Nuclear Energy Liability Policies (Facility Form). *This offer is contingent on sufficient support from policy holders, and may be withdrawn or modified by Nelia or Maelu as they deem necessary or appropriate.*

The Master Workers Policies will provide, under their separate terms and conditions, coverage for new workers claims. Premiums will be subject to a separate Industry Retrospective Rating Plan.

Coverage under the new master worker policies is not automatic. A written request must be submitted to Nelia or Maelu through regular market channels.

It is understood and agreed that all of the provisions of this endorsement shall remain in full force and effect without regard to this section 5, and without regard to whether or not the Named Insureds become insureds under the Master Worker Policies, or whether or not NELIA or MAELU terminate such policies or withdraw or modify their offer to underwrite such policies.

Executed for the companies

Date _____
By _____
(Signature or Authorized Officer)

(Print or Type Name and Title of Officer)

Executed for the Named Insured

(Named Insured—Type or Print)

Date _____
By _____

(Signature of Authorized Officer)

(Print or Type Name and Title of Officer)

Effective Date of this Endorsement _____

12:01 a.m. Standard Time

To form a part of Policy No. _____

Issued to _____

Date of Issue _____

For the subscribing companies

By _____

General Manager

Endorsement No. _____

Countersigned by _____

AMENDMENT OF COVERAGE ENDORSEMENT FOR WORKERS CLAIMS (Facility Form) NE-66(1/1/88)

It is agreed that:

1. Definitions

When used in reference to this endorsement:

"This policy" means the policy of which this endorsement forms a part;

"Nuclear related employment" means all work performed at one or more than one nuclear facility in the United States of America or in connection with the transportation of nuclear material to or from any such facility. All of a worker's nuclear related employment shall be considered as having begun on the first day of such employment, regardless of the number of employers involved or interruptions in such employment;

"Worker" refers to a person who is or was engaged in nuclear related employment;

"Workers claims" means claims for damages because of bodily injury to a worker caused by the radioactive, toxic, explosive or other hazardous properties of nuclear material and arising out of or in the course of the worker's nuclear related employment;

"Extraordinary nuclear occurrence" means an event which the United States Nuclear Regulatory Commission has determined to be an "extraordinary nuclear occurrence" as defined in the Atomic Energy Act of 1954, or in any law amendatory thereof.

2. Application of This Endorsement

This endorsement applies only to such insurance as is afforded by this policy for workers claims which do not arise in whole or in part out of an extraordinary nuclear occurrence.

3. Exclusion of New Workers Claims

This policy does not apply to bodily injury to a worker which arises in whole or in part out of nuclear related employment that begins on or after January 1, 1988.

4. Application of Policy To Workers Claims Not Excluded

With respect to such insurance as is afforded by this policy for workers claims which are not excluded, Insuring Agreement IV does not apply and the following Insuring Agreement IV-A does apply:

IV-A Application of Policy To Workers Claims

This policy applies only to bodily injury (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured not later than the close of December 31, 1997.

5. Availability of Supplemental Insurance

NELIA and MAELU are offering to make insurance under one or more Master Worker Policies available to all holders of Nuclear Energy Liability Policies (Facility Form). This offer is contingent on sufficient support from policyholders, and may be withdrawn or modified by NELIA or MAELU as they deem necessary or appropriate.

The Master Worker Policies will provide, under their separate terms and conditions, coverage for new workers claims. Premiums will be subject to a separate Industry Retrospective Rating Plan.

Coverage under the new master worker policies is not automatic. A written request must be submitted to NELIA or MAELU through regular market channels.

It is understood and agreed that all of the provisions of this endorsement shall remain in full force and effect without regard to this Section 5, and without regard to whether or not the Named Insureds become insureds under the Master Worker Policies, or whether or not NELIA or MAELU terminate such policies or withdraw or modify their offer to underwrite such policies.

Explanation of Use of This Endorsement: This endorsement is a mandatory endorsement which is to be attached to new Facility Form Policies issued on or after January 1, 1988.

Effective Date of this Endorsement

12:01 a.m. Standard Time

To form a part of Policy No. _____

Issued to _____

Date of Issue _____

For the subscribing companies

By _____

General Manager

Endorsement No. _____

Countersigned by _____

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

Nuclear Energy Liability Policy

Facility Worker Form, herein called Master Worker Policy, NMWP-1(1/1/88)

The undersigned members of Nuclear Energy Liability Insurance Association, hereinafter called the "companies", each itself severally and not jointly, and in the respective proportion hereinafter set forth, agree with the insureds named in Item 1 of the Declarations of each Certificate, hereinafter called the "Named Insureds", in consideration of the payment of the premium, and subject to all of the provisions of the applicable Certificate and of this policy, as follows:

I-Relation Between the Master Worker Policy and Certificates

No insurance is provided by this policy except through a Certificate issued to form a

part hereof. The insurance then applies separately to the persons and organizations who are defined in Section IV as insureds under each such Certificate, except with respect to the Amount of Insurance Available.

The Amount of Insurance Available through such a Certificate to any person or organization who is an insured thereunder is limited as provided in Section VIII of this policy.

II-Definitions

When used in reference to this policy:

"Bodily injury" means bodily injury, sickness or disease, including death resulting therefrom;

"Byproduct material" has the meaning given in the Atomic Energy Act of 1954, or in any law amendatory thereof;

"Certificate", unless qualified, refers to a Certificate of Insurance (including Declarations and endorsements forming a part thereof) issued to form a part of this policy or of a MAELU Policy;

"Claims costs" means, with reference to claims or suits the companies have the right and duty to defend under this policy;

(1) Cost taxed against the insured in such suits and interest on any judgments therein;

(2) Premiums on appeal bonds and on bonds to release attachments in such suits (but the companies have no obligation to apply for or furnish such bonds);

(3) Reasonable expenses, other than loss of earnings, incurred by the insured at the companies' request;

(4) Payments for expenses incurred in the investigation, negotiation, settlement and defense of such claims or suits, including, but not limited to, the cost of such allocated claims services by employees of the companies, fees and expenses of independent adjusters, attorneys' fees and disbursements, expenses for expert testimony, examination, x-ray or autopsy or medical expenses of any kind;

(5) Payments for expenses incurred by the companies in investigating an occurrence resulting in bodily injury or in minimizing its effects;

"Discovery period" means the period defined in Section VI B hereof;

"Extraordinary nuclear occurrence" means an event which the United States Nuclear Regulatory Commission has determined to be an "extraordinary nuclear occurrence" as defined in the Atomic Energy Act of 1954, or in any law amendatory thereof;

"Insured contract" means that part of a contract or agreement made prior to bodily injury to a new worker under which the insured assumes the tort liability of a third person to pay damages because of such bodily injury. "Tort liability" means a liability that would be imposed by law on the third person in the absence of an express assumption of liability by the third person;

"Insured facility" means a facility with respect to which insurance is provided through a Certificate;

"Insured shipment" means a shipment of source material, special nuclear material, spent fuel or waste (herein called "material");

(1) To the facility from any location other than an insured facility, but only if the

transportation of the material is not by predetermination to be interrupted by removal of the material from a transporting conveyance for any purpose other than the continuation of its transportation; or

(2) From the facility to any other location, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation;

"MAELU" means Mutual Atomic Energy Liability Underwriters;

"MAELU Policy" means a Nuclear Energy Liability Policy (Facility Worker Form) written by members of MAELU;

"NELIA" means Nuclear Energy Liability Insurance Association;

"New worker" refers to a person who is or was engaged in nuclear related employment that begins on or after January 1, 1988;

"New worker's claim" means a claim for damages because of bodily injury to a new worker caused by the radioactive, toxic, explosive or other hazardous properties of nuclear material and arising out of or in the course of the new worker's nuclear related employment;

"Non-ratable incurred losses" has the meaning given in Attachment 1 to this policy;

"Nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of nuclear material which is:

(1) At the facility as described in the applicable Certificate issued to form a part of this policy or has been discharged or dispersed therefrom without intent to relinquish possession of custody thereof to any other person or organization; or

(2) In an insured shipment that is away from any other insured nuclear facility and is in the course of transportation, including handling and temporary storage incidental thereto within:

(a) The territorial limits of the United States of America, its territories or possessions or Puerto Rico; or

(b) International waters or airspace, provided that:

(i) The nuclear material is in the course of transportation between two points located within the territorial limits described in (a) above; and

(ii) There are no deviations in the course of the transportation for the purpose of going to any other country, state or nation, except to a port or place of refuge in an emergency;

"Nuclear facility" means any of the following and includes the site on which any of them is located, all operations conducted on such site and all premises used for such operations:

(1) The facility as described in any Certificate;

(2) Any nuclear reactor;

(3) Any equipment or device designed or used for:

(a) Separating the isotopes of uranium or plutonium;

(b) Processing or utilizing spent fuel; or

(c) Handling, processing or packaging waste;

(4) Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total

amount of such material in the custody of the insured at the premises where such equipment of device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(5) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste;

"Nuclear material" means source material, special nuclear material or byproduct material;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"Nuclear related employment" means all work performed at one or more than one nuclear facility in the United States of America or in connection with the transportation of nuclear material to or from any such facility.

All of a new worker's nuclear related employment shall be considered as having begun on the first day of such employment, regardless of the number of employers involved or interruptions in such employment;

"Policy period" means the period defined in Section VI A hereof;

"Ratable incurred losses" has the meaning given in Attachment 1 to this policy;

"Source material" has the meaning given in the Atomic Energy Act of 1954, or in any law amendatory thereof, and also includes tailings or wastes produced by the extraction of uranium or thorium from ore processed primarily for its source material content;

"Special nuclear material" has the meaning given in the Atomic Energy Act of 1954, or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in any nuclear reactor;

"The facility" refers to the facility described in the Declarations of a Certificate. It includes the location described in Item 3 thereof and all property and operations at such location;

"Waste" means any waste material that contains byproduct material and results from the operation by any person or organization of:

- (1) Any nuclear reactor; or
- (2) Any equipment or device designed or used for:
 - (a) Separating the isotopes of uranium or plutonium;
 - (b) Processing or utilizing spent fuel; or
 - (c) Handling, processing or packaging such waste material.

III—Coverage

In the event that a new worker's claim is made against a person or organization who is an insured under a Certificate issued to form a part of this policy:

(1) The companies shall pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury to which this policy applies, sustained by a new worker and caused by the nuclear energy hazard.

The companies shall have the right and duty to defend any suit against the insured

alleging such injury and seeking damages payable under the terms of this policy. But the companies may make such investigation and settlement of any claim or suit seeking such damages as they deem appropriate.

(2) The companies shall also pay, as part of the Amount of Insurance Available under this policy, the claims costs relating to any such claim or suit.

(3) The companies' obligation to pay damages and claims costs, and to defend any claim and suit ends when the Policy Aggregate Limit has been exhausted pursuant to the provisions of Section VIII.

IV—Definition of Insured

When used in reference to a Certificate issued to form a part of this policy, the unqualified word "insured" means:

(1) each insured named in Item 1 of the Declarations of the Certificate; and

(2) any other person or organization with respect to legal responsibility for damages because of bodily injury to a new worker caused by the nuclear energy hazard applicable to the Certificate. This subsection (2) does not include as an insured the United States of America or any of its agencies except the Tennessee Valley Authority.

V—Exclusions

This policy does not apply:

(1) To any obligation for which the insured or any carrier as his insurer may be held liable under any worker's compensation, unemployment compensation or disability benefits law, or under any similar law;

(2) To bodily injury to any employee of the insured arising out of or in the course of employment by the insured; but this exclusion (2) does not apply to liability assumed by the insured under an insured contract;

(3) To liability assumed by the insured under contract, other than an insured contract;

(4) To bodily injury to a new worker due to the manufacturing, handling or use at the location designated in Item 3 of the Declarations of any Certificate, in time of peace or war, of any nuclear weapon or other instrument of war utilizing special nuclear material or byproduct material;

(5) To bodily injury to a new worker due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;

(6) To bodily injury to a new worker arising in whole or in part out of an extraordinary nuclear occurrence.

VI—Policy Period; Discovery Period; Application of Policy

A. Policy Period

The policy period of this policy begins at 12:01 a.m. on January 1, 1988 and ends at the close of December 31, 1992, Eastern Standard Time, or when all Certificates issued to form a part hereof have been cancelled, whichever first occurs.

B. Discovery Period

The discovery period for claims made under this policy begins at 12:01 a.m. on January 1, 1988 and ends at the close of December 31, 1997, Eastern Standard Time.

C. Application of Policy

This policy applies only to bodily injury to a new worker (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is first made against the insured within the discovery period.

VII—Other Insurance

A. This insurance is primary insurance under any insurance afforded by a Master Policy-Nuclear Energy Liability Insurance (Secondary Financial Protection) issued by NELIA or MAELU.

B. If an insured has other valid and collectible insurance, except under a MAELU Policy, for loss or expense covered by this policy, this shall be excess insurance over such other insurance. If the insured has insurance under a MAELU Policy, whether the insurance is collectible or not, the companies shall then be liable under this policy only for such proportion of loss or expense as the amount stated as the Policy Aggregate Limit in Section VIII of this policy bears to the sum of such amount and the corresponding amount stated in the MAELU Policy.

VIII—Amount of Insurance Available

A. Policy Aggregate Limit

1. The Policy Aggregate Limit is \$124 million. This limit is not cumulative from year to year. The limit applies to all new worker's claims that qualify for coverage under this policy (herein called "qualified claims").

2. The Policy Aggregate Limit applies collectively to all new worker's claims. Such claims may be paid by NELIA on behalf of the companies as the claims, in NELIA's discretion, become ready for disposition, and claims costs may be paid as they become due, all without regard to the order in which such claims were made and without any obligation to maintain, reserve or use any portion of the Policy Aggregate Limit for claims reported under any particular Certificate.

B. Limitation of the Companies' Liability

1. Regardless of the number of (a) Certificates issued to form a part of this policy, (b) persons and organizations who are insureds under such Certificates, (c) qualified claims, or (d) years this policy or any such Certificates shall continue in force, the Policy Aggregate Limit is the total liability of the companies for all of their obligations under this policy, including the defense of suits and the payment of damages and claims costs.

2. This policy provides for certain automatic reinstatements of the Policy Aggregate Limit. Regardless of such provision, if, during the policy period or thereafter, the total payments of the companies for

(a) Non-ratable incurred losses, and
(b) Those ratable incurred losses for which the companies have not been reimbursed under the Industry Retrospective Rating Plan Premium Endorsement described in Attachment 1 to this policy, equal \$124 million, the Policy Aggregate Limit shall be deemed to be exhausted, and shall not be further reinstated except by an

endorsement issued to form a part of this policy for additional premium as determined by the companies.

C. Reduction and Reinstatement of the Policy Aggregate Limit

1. Each payment made by the companies in discharge of their obligations under this policy shall reduce the Policy Aggregate Limit by the amount of such payment.

2. The companies shall, however, automatically reinstate the policy aggregate limit until the total amount of such reinstatements equals \$124 million, but in no event shall there be any automatic reinstatements after the Policy Aggregate Limit is exhausted pursuant to the provisions of subsection B.2. above. Thereafter, there shall be no further reinstatement of the Policy Aggregate Limit except by an endorsement issued to form a part of this policy for additional premium as determined by the companies.

3. It is a condition of this insurance that the companies shall have the right to reimburse themselves, as a matter of first priority, from funds held by NELIA in the Special Reserve Account described in Attachment 1 to this policy or from retrospective premiums received by NELIA for this insurance. The amount of reimbursement shall be equal to 95% of each payment made by the companies with respect to their obligations under this policy.

IX—Insured's Duties in Case of Claims or Suits

A. Notice of Claims or Suits

In the event of any claim or suit involving bodily injury to which a Certificate issued to form a part of this policy applies, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof shall be given by or for the insured to the companies as soon as practicable. The insured shall immediately forward to the companies every demand, notice, summons or other process received relating to claims or suits against the insured.

B. Assistance and Cooperation

The insured shall cooperate with the companies and, upon their request, shall:

- (1) Attend hearings and trials; and
- (2) Assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of any legal proceedings in connection with the subject matter of this insurance.

The insured shall not, except at the insured's own cost, make any payment, assume any obligation or incur any expense.

X—Subrogation

In the event of any payment through a Certificate to form a part of this policy, the companies shall be subrogated to all the insured's rights of recovery therefor against any person or organization, and the insured shall execute and deliver instruments and papers, and so whatever else is necessary to secure such rights. Prior to knowledge of bodily injury caused by the nuclear energy hazard the insured may waive in writing any or all right of recovery against any person or organization, but after such knowledge the

insured shall not waive or otherwise prejudice any such right of recovery.

The companies hereby waive any right of subrogation against (1) any other insured of (2) the United States of America or any of its agencies acquired by reason of any payment under this policy.

It is a condition of this policy that if an insured makes a recovery on account of any such injury, the insured shall repay to the companies the amount to which the companies would have been entitled had the foregoing provisions, or any of them, not been included in the policy.

XI—Inspection and Suspension

The companies shall be permitted, but not obligated, to inspect at any time the facility as described in any Certificate and all books, records and operation relating thereto, both with respect to this insurance, and any other nuclear energy liability insurance and property insurance also afforded with respect thereto by members of NELIA, American Nuclear Insurers, MAELU or MAERP Reinsurance Association.

If a representative of the companies discovers a condition which he or she believes to be unduly dangerous with respect to the risks insured under the Certificate, a representative of the companies may request such condition to be corrected without delay. In the event of noncompliance with the request, an officer of NELIA may, by written notice mailed or delivered to the first Named Insured, with similar notice to the United States Nuclear Regulatory Commission, suspend the insurance afforded by a Certificate issued by NELIA effective 12:00 midnight of the next business day of such Commission following the date that such Commission receives such notice. The period of such suspension shall terminate as of the time stated in a written notice from NELIA to the first Named Insured that such condition has been corrected.

Neither the right to make such inspections or suspensions nor the making thereof nor any advice or report resulting therefrom shall constitute an undertaking, on behalf of or for the benefit of the Named Insureds or others to determine or warrant that the facility or operations relating thereto are safe or healthful, or are in compliance with any law, rule or regulation.

In consideration of the issuance or continuation of a Certificate, the Named Insureds agree that neither the companies nor any persons or organizations making such inspections on their behalf shall be liable for damage to the facility or any consequential damage or cost resulting therefrom, including but not limited to any such damage or cost relating to interruption of business or manufacture, arising out of the making of or failure to make any such inspection of the facility, any report thereon, or any such suspension of insurance, but this provision does not limit the companies' contractual obligations under a Certificate issued by NELIA or any policy issued by NELIA or American Nuclear Insurers affording the insured nuclear energy liability or property insurance.

XII—Cancellation of Certificates

The first Named Insured designated in a Certificate issued to form a part of this policy may cancel such Certificate by mailing to the companies and the United States Nuclear Regulatory Commission written notice stating when, not less than 30 days thereafter, such cancellation shall be effective.

The companies may cancel any such Certificate by mailing to the first Named Insured designated therein at the address shown in such Certificate and to the United States Nuclear Regulatory Commission written notice, stating when, not less than 90 days thereafter, such cancellation shall be effective; provided in the event of non-payment of premium, or if the operator of the facility, as designated in the Declarations of the Certificate, is replaced by another person or organization, such Certificate may be cancelled by the companies by mailing to the first Named Insured at the address shown therein and to the United States Nuclear Regulatory Commission written notice, stating when, not less than 30 days thereafter, such cancellation shall be effective.

The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the Certificate period. Delivery of such written notice either by the first Named Insured or the companies shall be equivalent to mailing.

Upon cancellation of a Certificate, other than as of the end of December 31 in any year, the earned standard premium for the period such Certificate has been in force since the preceding December 31 shall be computed in accordance with the following provisions:

- (1) If the first Named Insured cancels, the earned standard premium for such period shall be computed in accordance with the customary annual short rate table and procedure; provided, however, that if the first Named Insured cancels after knowledge of bodily injury caused by the nuclear energy hazard, all premiums theretofore paid or payable shall be fully earned;
- (2) If the companies cancel, the earned standard premium for such period shall be computed pro rata.

Premium adjustment, if any, may be made either at the time of cancellation or as soon as practicable after cancellation becomes effective, but payment of tender of unearned premium is not a condition of cancellation.

Cancellation of a Certificate shall not affect the rights and obligations of the Named Insureds under the Insureds under the Industry Retrospective Rating Plan Premium Endorsement forming a part of the Certificate.

XIII—General Conditions

A. Premium

The Named Insureds designated in a Certificate issued by NELIA shall pay the companies the premiums for the Certificate in accordance with the provisions of the Industry Retrospective Rating Plan Premium Endorsement described in Attachment 1 to this policy.

B. Modifications, Waiver

The provisions of this policy or a Certificate issued to form a part hereof shall not be changed or waived except by an endorsement issued by the companies to form a part of the policy or Certificate.

C. Assignment

Assignment of interest under a Certificate issued to form a part of this policy shall not bind the companies until their consent is endorsed thereon. If, however, a Named Insured shall die or be declared bankrupt or insolvent, the Certificate shall cover the Named Insured's legal representative, receiver or trustee as an insured, but only with respect to liability as such, and then only provided written notice of the appointment as legal representative, receiver or trustee is given to the companies within 10 days after such appointment.

D. Suit

No suit or action on a Certificate issued to form a part of this policy shall lie against the companies or any of them unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of the policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the companies.

Any person or organization or the legal representative thereof who has secured such judgment of written agreement shall thereafter be entitled to recover under the Certificate to the extent of the insurance afforded by this policy through the Certificate. No person or organization shall have any right under the Certificate to join the companies or any of them as parties to any action against the insured to determine the insured's liability, nor shall the companies or any of them be impleaded by the insured or the insured's legal representative.

Bankruptcy or insolvency of the insured or the insured's estate shall not relieve the companies of any of their obligations under this policy.

E. Authorization of The First Named Insured

Except with respect to compliance with the obligations imposed on the insured by the Sections of this policy entitled "Insured's Duties in Case of Claims or Suits", "Subrogation" and "Suit", the first Named Insured designated in the Declarations of a Certificate issued to form a part of this policy is authorized to act for every other insured in all matters pertaining to this insurance.

F. Insured Representation

Any notice, sworn statement of proof of Loss which may be required by the provisions of this policy may be given to any one of the companies specified in the Schedule of Subscribing Companies attached hereto. Such notice, statement or proof of Loss so given shall be valid and binding on all such companies.

In any action or suit against such companies, service of process may be made on any one of them and such service shall be valid and binding service on all such companies.

Nuclear Energy Liability Insurance Association is the agent of the companies with respect to all matters pertaining to this insurance. All notices or other communications required by this policy may be given to such agent at its office at: Nuclear Energy Liability Insurance Association, The Exchange, Suite 245, 270 Farmington Avenue, Farmington, Connecticut 06032, with the same force and effect as if given directly to the companies. Any requests, demands or agreements made by such agent shall be deemed to have been made directly by the companies.

G. Changes in Subscribing Companies and Their Proportionate Liability

By acceptance of this policy the Named Insureds agree that the members of Nuclear Energy Liability Insurance Association liable under this policy, and the proportionate liability of each such member, may change from year to year, and further agree that regardless of such changes:

(1) Each company subscribing this policy upon its issuance shall be liable only for its stated proportion of any obligation assumed or expense incurred under this policy because of bodily injury to new workers caused, during the period from the effective date of this policy to the close of December 31 next following, by the nuclear energy hazard; for each subsequent calendar year, beginning January 1 next following the effective date of this policy, any change in the subscribing companies and the proportionate liability of each such company shall be stated in an endorsement issued to form a part of this policy, duly executed and attested by the President of Nuclear Energy Liability Insurance Association on behalf of each such company, and a copy of which will be mailed or delivered to the first Named Insured of each Certificate.

(2) The liability of any subscribing company shall not be cumulative from year to year.

H. Declarations

By acceptance of this Master Worker Policy, the Named Insureds designated in a Certificate agree that the statements in such Certificate are their agreements and representations, that this Master Worker Policy and such Certificate are issued in reliance upon the truth of such representations and that this Master Worker Policy and such Certificate embody all agreements between such Named Insureds and the companies or any of their agents relating to this insurance.

In Witness Whereof, the companies subscribing this policy have caused the policy to be executed and attested on their behalf by the President of Nuclear Energy Liability Insurance Association and duly countersigned by an authorized representative, but this policy shall be binding on each company only to the extent of its designated proportion of any obligation assumed or expense incurred under this policy.

For the Subscribing Companies:

Date of Issue: _____ 19____

Countersigned by: (Authorized Representative)

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION**Nuclear Energy Liability Policy**

(Facility Worker Form) herein called the Master Worker Policy

Certificate of Insurance, NMWPC-1(1/1/88)

Certificate No. _____

This is to certify that the insured named in Item 1 of the Declarations hereof, hereinafter called the "Named Insureds", have obtained insurance under the Master Worker Policy issued by Nuclear Energy Liability Insurance Association on behalf of its members. The insurance is subject to all of the provisions of the "Certificate" and the Master Worker Policy.

1—Declarations

Item 1.—Named Insureds and Addresses:

Item 2.—Certificate Coverage Period:

Beginning at 12:01 a.m. January 1, 1988 and ending at the close of December 31, 1992, Eastern Standard Time, or at the time and date this Certificate is cancelled or terminated, whichever first occurs.

Item 3.—Description of the Facility:

Location:

Type:

Operator of the Facility:

Item 4.—Amount of Insurance Available:

The amount of insurance afforded by the Master Worker Policy through this Certificate shall be determined by Section VIII of the Master Worker Policy and all of the other provisions of the policy relating thereto.

Item 5.—Advance Premium: \$

2—Application of Certificate

This Certificate applies only to bodily injury to a new worker (1) which is caused, during the Certificate Coverage Period, by the nuclear energy hazard and (2) which is discovered and for which written claim is first made against an insured under the Certificate within the discovery period of the Master Worker Policy.

3—Industry Retrospective Rating Plan

All insurance under the Master Worker Policy is subject to the Industry Retrospective Rating Plan in use by the companies. No insurance is provided under this Certificate unless and until the first Named Insured has accepted in writing the Industry Retrospective Rating Plan Premium Endorsement and a copy of the signed endorsement has been issued by the companies to form a part of this Certificate.

In Witness Whereof, the companies subscribing the Master Worker Policy have caused this Certificate to be executed and attested on their behalf by the President of Nuclear Energy Liability Insurance Association and duly countersigned by an authorized representative.

For the Subscribing Companies:

Date of Issue: _____ 19____

Countersigned by: (Authorized Representative)

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

Nuclear Energy Liability Insurance

Industry Retrospective Rating Plan Premium
Endorsement, NE-W-1(1/1/88)

It is agreed that:

1. Definitions

With reference to the premium for the Certificate of which this endorsement forms a part:

"Master Worker Policy" means the Master Worker Policy issued by NELIA;

"Certificate Holder" means the first Named Insured in a Certificate issued to form a part of the Master Worker Policy;

"Advance premium", for any calendar year, is the estimated standard premium for that calendar year;

"Standard premium", for any calendar year, is the premium for that calendar year computed in accordance with the companies' rules, rates, rating plans (other than the Industry Retrospective Rating Plan), premiums and minimum premiums applicable to this insurance. Standard premium includes elements for premium taxes, expenses, profit and contingencies, guaranteed cost insurance and estimated reserve premium. The elements of standard premium, other than for premium taxes and estimated reserve premium, are not subject to retrospective adjustment;

"Reserve premium" means that portion of the premium for a Certificate (including reserve premium charges paid) that is specifically allocated under the Industry Retrospective Rating Plan for ratable incurred losses;

"Industry reserve premium", for any period, is the sum of the reserve premiums for that period for all Certificates issued to form a part of the Master Worker Policy;

"Retrospective adjustment ratio", for any period, is the ratio of the reserve premium for this Certificate for that period to the industry reserve premium for the same period;

"Incurred losses" means the sum of all:

(1) Losses and expenses paid by NELIA, and

(2) Reserves for losses and expenses as estimated by NELIA, because of obligations assumed and expenses incurred in connection with such obligations by the members of NELIA under the Master Worker Policy;

"Ratable incurred losses" means 95% of incurred losses. Ratable incurred losses are the portion of incurred losses which are not covered by the guaranteed cost insurance element of standard premiums;

"Non-ratable incurred losses" means 5% of incurred losses. Nonratable incurred losses are the portion of incurred losses which are covered by the guaranteed cost insurance element of standard premiums;

"Reserve for refunds", as of any date, is the algebraic difference between:

(1) All industry reserve premium for the period from January 1, 1988 through such date, minus

(2) The total for the same period of (a) all ratable incurred losses and (b) all industry reserve premium refunds made under the Industry Retrospective Rating Plan by members of NELIA;

"Industry reserve premium charge", for any period, means the amount determined pursuant to the provisions of Section 4 of this endorsement for payment by the Named Insureds under Certificates;

"Reserve premium charge" means the portion of an industry reserve premium charge payable by the Named Insureds under Certificates;

"Industry reserve premium refund" for any period, means the amount determined pursuant to the provisions of Section 4 of this endorsement for return to the Named Insureds under Certificates;

"Reserve premium refund" means the portion of an industry reserve premium refund returnable to the Named Insureds under this Certificate.

2. Payment of Advance and Standard Premiums

The Named Insureds shall pay the companies the advance premium stated in the declarations, for the period from the effective date of this Certificate through December 31 following. Thereafter, at the beginning of each calendar year while this Certificate is in force, the Named Insureds shall pay the advance premium for such year to the companies.

The advance premium for each calendar year shall be stated in the Advance and Standard Premium Endorsement for the year issued by the companies as soon as practicable prior to or after the beginning of the year.

As soon as practicable after the end of a calendar year or the Certificate Coverage Period, the standard premium for the preceding year shall be finally determined and stated in the Advance and Standard Premium Endorsement for that year. If the Standard Premium exceeds the Advance Premium paid for that year, the Named Insureds shall pay the excess to the companies; if less, the companies shall return to the Named Insureds the excess portion paid.

The Named Insureds shall maintain records of the information necessary for premium computation and shall send copies of such records to the companies as directed, at the end of each calendar year, at the end of the Certificate Coverage Period and at such other times as the companies may direct.

3. Special Reserve Account; Use of Reserve Premiums

NELIA shall maintain on behalf of its members a Special Reserve Account for holding collectively all reserve premiums paid for all Certificates issued to form a part of the Master Worker Policy. Such premiums, together with any undistributed net income realized thereon after taxes and investment expenses, shall be used for the following purposes only:

(1) To pay ratable incurred losses or, in the event ratable incurred losses are paid under the Master Worker Policy from funds advanced by the members of NELIA subscribing the policy, to reimburse such members as a matter of first priority for the funds advanced;

(2) To refund any amounts so held to the Named Insureds, as provided in Section 4.

No members of NELIA and no Named Insureds shall have any individual interest in or claim upon amounts held in the special Reserve Account, except to participate proportionally in any refund or reimbursement provided for above.

All reserve premiums paid or payable for this certificate may be used by NELIA to discharge the obligations of its members under the Master Worker Policy with respect to the above purposes and arising out of claims made under any Certificate issued to form a part of the Master Worker Policy.

4. Payment of Reserve Premium Charges and Refunds

As soon as practicable after each December 31 the companies will review the status of the reserve for refunds and report their findings to all Certificate Holders.

If, at any time, the companies find that there is negative balance in the reserve for refunds and that such condition is likely to prevail, they shall determine an appropriate industry reserve premium charge. Similarly, if the companies find that there is a surplus positive balance, they shall determine an appropriate industry reserve premium refund.

The portion of an industry reserve premium charge or an industry reserve premium refund that is:

(1) Payable by the Named Insureds as a reserve premium charge, or

(2) Due such insureds as reserve premium refund, shall be determined by multiplying the industry reserve premium charge or the industry reserve premium refund by the retrospective adjustment ratio applicable to this Certificate.

The amount of any reserve premium charge shall be stated in a Retrospective Reserve Premium Charge Endorsement. The charge shall be paid promptly after receipt of the endorsement.

When all claims covered by the Master Worker Policy are closed the companies shall make a final review and report, and shall determine a final industry reserve premium charge or industry reserve premium refund equal to the amount of the balance.

5. Final Premium

The final premium for this Certificate shall be (a) the sum of the standard premiums for each calendar year, or portion thereof, during which the Certificate remains in force plus (b) the sum of all reserve premiums, including all reserve premium charges, minus (c) the sum of all reserve premium refunds.

6. Reserve Premium Charge Agreement

In consideration of (a) the participation of Named Insureds in other Certificates subject to the Industry Retrospective Rating Plan, (b) the undertaking of such Named Insureds to pay their appropriate share of any industry reserve premium charge and (c) the obligations assumed by the members of NELIA under the Master Worker Policy, the Named Insureds, by acceptance of the Master Worker Policy, agree:

(1) That the insurance provided by the Master Policy applies collectively to all claims covered by the policy through any and all Certificates issued to form a part of the policy.

(2) That the right of each Named Insured under a Certificate to receive reserve premium refunds and the obligation of each such insured to pay reserve premiums charges applies to all claims covered by the Master Worker Policy and continues until all such claims are closed, whether or not such claims were before the inception of the Certificate or after its termination.

(3) To pay all reserve premium charges due promptly after receipt of the Retrospective Reserve Premium Charge Endorsement, whether or not the Certificate is terminated. Any reserve premium charge shall be overdue if not paid within 60 days of the date of the invoice for the charge.

Overdue reserve premium charges shall bear interest from the due date until paid at an annual rate equal to the sum of (a) 3% plus (b) a rate of interest equal to Moody's Average Public Utility Bond Yield described in the issue of Moody's Bond Survey current on the due date. Any reserve premium refund due to Named Insureds under a Certificate shall be used to pay any overdue reserve premium charges to such Named Insureds.

7. Reserve Premium Refund Agreement

Each member of NELLA subscribing the Master Worker Policy for any calendar year, or portion thereof, with respect to which an industry reserve premium refund is determined to be payable thereby agrees for itself, severally and not jointly, and in the respective proportion of its liability assumed under the Master Worker Policy for that calendar year, to return promptly to the Named Insureds that portion of such refund due such Insureds, as determined in accordance with the provisions of this endorsement.

Accepted and agreed by the first Named Insured in behalf of itself and every other Named Insured stated in the Declarations of the Certificate of which this endorsement forms a part.

(First Named Insured—Type or Print

Date _____
By _____
(Signature of Authorized Officer)

(Type of Print Named and Title of Officer)

Effective Date of this Endorsement—

12:01 a.m. Standard Time

To form a part of Policy No. _____

Issued to _____

Date of Issue _____

For the subscribing companies:

By _____

General Manager

Endorsement No. _____

Countersigned by _____

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

Nuclear Energy Liability Insurance

Advance Premium and Standard Premium Endorsement, NE-W-2(1/1/88)

Calendar Year 1988

1. Advance Premium

It is agreed that the Advance Premium due the companies for the period designated above is:

\$ _____

2. Standard Premium and Reserve Premium

In the absence of a change in the Advance Premium indicated above, it is agreed that, subject to the provisions of the Industry Retrospective Rating Plan, the Standard Premium is said Advance Premium and the estimated reserve Premium element of the Standard Premium is:

\$ _____

Explanation of Use of this Endorsement:
This endorsement will be used in the first year of the Master Worker Policy. It states the Advance Premium and the estimated Reserve Premium for the year for the Certificate to which the endorsement is attached.

Effective Date of this Endorsement—

12:01 a.m. Standard Time

To form a part of Policy No. _____

Issued to _____

Date of Issue _____

For the subscribing companies:

By _____

General Manager

Endorsement No. _____

Countersigned by _____

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

Nuclear Energy Liability Insurance

Advance Premium and Standard Premium Endorsement, NE-W-3 (1/1/88)

Calendar Year _____

It is agreed that Items 1 and 2 of Endorsement No. _____ are amended to read:

1. Advance Premium

It is agreed that the Advance Premium due the companies for the period designated above is:

\$ _____

2. Standard Premium and Reserve Premium

In the absence of a change in the advance premium indicated above, it is agreed that, subject to the provisions of the Industry Retrospective Rating Plan, the Standard Premium is said Advance Premium and the estimated Reserve Premium element of the Standard Premium is:

\$ _____

Explanation of Use of this Endorsement:
This endorsement will be used for calendar years of the Master Worker Policy after the 1988 calendar year. It states the Advance Premium and the estimated Reserve Premium for the year for the Certificate to which the endorsement is attached.

Effective Date of this Endorsement—

12:01 a.m. Standard Time

To form a part of Policy No. _____

Issued to _____

Date of Issue _____

For the subscribing companies:

By _____

General Manager

Endorsement No. _____

Countersigned by _____

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

Nuclear Energy Liability Insurance

Retrospective Reserve Premium Charge Endorsement, NE-W-5 (1/1/88)

1. Industry Reserve Premium Charge

In accordance with Section 4 of the Industry Retrospective Rating Plan Premium Endorsement attached to each Certificate to this policy, the companies have reviewed the status of the reserve for refunds, found that there is a negative balance in the reserve for refunds and have determined that an industry reserve premium charge, as indicated below, is appropriate:

\$ _____

2. Retrospective Adjustment Ratio

The portion of the industry reserve premium charge payable by the Named Insureds under this Certificate is determined by multiplying such charge by this Certificate's retrospective adjustment ratio, which is:

\$ _____

3. Reserve Premium Charge

The Named Insureds' portion of the industry reserve premium charge, as calculated above, is:

\$ _____

Explanation of Use of this Endorsement:
This endorsement will be issued by the companies under the Master Worker Policy after an industry reserve premium charge has been determined because there is a negative balance in the reserve for refunds. It states the reserve premium charge applicable to the Certificate to which the endorsement is attached.

Effective Date of this Endorsement—

12:01 a.m. Standard Time

To form a part of Policy No. _____

Issued to _____

Date of Issue _____

For the subscribing companies

By _____

General Manager

Endorsement No. _____

Countersigned by 2 _____

Dated at Rockville, Maryland, this 8th day

of August, 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88-18743 Filed 8-17-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket No. R-0643]

Regulation CC; Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comments.

SUMMARY: The Board is amending Regulation CC to conform the definition of "paying bank" to the Expedited Funds Availability Act as interpreted by a recent court decision. Other conforming amendments are also being made. The Board has adopted these changes on an interim basis to ensure they are in place when the Act takes effect on September 1, 1988. The Board is requesting comments on the interim rule pending adoption of a final rule.

DATES: The interim rule takes effect on September 1, 1988.

Comments must be received no later than September 12, 1988.

ADDRESS: Comments, which should refer to Docket No. R-0643, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received will be made available to the public, and may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m.

Comments on the changes to the information collection requirements should be sent to Mr. Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Joseph R. Alexander, Senior Attorney, Legal Division (202/452-2489); Louise L. Roseman, Assistant Director, Division of Federal Reserve Bank Operations (202/452-3874); Gerald P. Hurst, Senior Counsel, Division of Consumer and Community Affairs (202/452-3667). For the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

Federal Reserve Board Clearance Officer, Nancy Steele, Division of Research and Statistics (202/452-3822).

OMB Desk Officer, Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget (202/395-7340).

SUPPLEMENTARY INFORMATION: On May 13, 1988, the Board issued its Regulation CC—Availability of Funds and Collection of Checks (12 CFR Part 229) to implement the Expedited Funds Availability Act (the "Act") (Title VI of Pub. L. 100-86). 53 FR 19373 (May 27, 1988). In keeping with the Board's view that the Act established a clear link between the time it normally takes a check to be cleared and returned, and the time within which the depository

bank¹ must make the funds available to the depositor, the regulations provided that where a check is payable by one bank but "payable through"² another and sent to the payable through bank for payment or collection, the location of the payable through bank would determine whether a check is local or nonlocal vis-a-vis the depository bank for the purposes of the funds availability schedules in the regulation.

Shortly after the Board issued Regulation CC, a trade association of credit unions and one credit union whose checks are payable through a nonlocal bank filed suit against the Board seeking to overturn the definition of paying bank to the extent that the definition included a payable through bank where the check was drawn on a credit union. Recently, the court granted the plaintiffs' motion for summary judgment and invalidated Regulation CC's definition of paying bank to the extent that it includes a payable through bank where the check is drawn on a credit union. *Credit Union National Association v. Board of Governors*, No. 88-1295 OG (D.D.C. July 28, 1988). The court found that the Board's regulation was inconsistent with the Act to the extent that it defined the payable through bank as the paying bank for purposes of the Act's funds availability requirements.

The Expedited Funds Availability Act takes effect on September 1, 1988. Regulation CC also takes effect on that date, except for those portions of it invalidated by the Court's order. The Board has not determined whether to appeal the court's decision. Nevertheless, in order to clarify the duties of banks and others with respect to checks in light of the court's order, temporary conforming amendments are being made to the definitions and to the disclosure rules. These amendments primarily affect the classification of checks payable by a depository institution but payable through another institution as local or nonlocal. They do not affect payable through drafts

payable by nonbank payors. Further, as the payable through share draft will carry the routing number of the payable through bank, not the credit union, provisions in the regulation that allow a depository bank to rely on the routing number to determine whether a check is local or nonlocal are also being amended.

The interim rule permits depository institutions whose initial disclosures are affected by the court's decision to send simple clarifying notices in regularly scheduled mailings to existing account customers. Institutions will be deemed to be in compliance with the disclosure requirements of the regulation as long as the disclosures are revised by December 31, 1988. Finally, depository institutions may have operational difficulties in identifying credit union payable through share drafts for availability purposes. The Commentary to § 229.21(c) concerning bona fide errors is being amended to clarify that it may be a bona fide error if a depository institution fails to identify for availability purposes a local check that is a payable through draft provided that it has procedures for identifying such drafts. If the Board decides not to appeal the court's decision or if any appeal is unsuccessful, the Board, after consideration of any comments received with regard to the interim rule, may adopt the interim rule as a final amendment to Regulation CC. In addition, the Board may also consider additional rulemaking to address operational or disclosure problems that might result because depository banks and bank customers cannot rely on the routing number printed on a payable through draft to determine whether the check is local or nonlocal for funds availability purposes.

The Board believes that it is important to clarify these issues with an amended regulation before September 1, so that banks and other parties affected by Regulation CC are fully aware of their responsibilities under the Act by the time it takes effect. Nonetheless, there is not sufficient time for the Board to publish proposed regulations for comment before that date. Accordingly, the Board, for good cause, finds that the notice and public comment procedure normally required is impractical and contrary to the public interest under 5 U.S.C. 553(b)(3). The Board further finds that, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to make the interim rule effective on September 1, 1988, without regard for the 30-day period provided for in 5 U.S.C. 553(d).

Paperwork Reduction Act Notice. The Board has previously submitted the

¹ The Act uses the term "receiving depository institution" to mean "the branch of a depository institution or the proprietary ATM in which a check is first deposited." 12 U.S.C. 4001(20). Because the term "receiving depository institution" is unique to the Act, the Board used the term "depository bank," which, because it is used in the Uniform Commercial Code ("U.C.C.") and the Board's Regulation J (12 CFR Part 210), is familiar to the banking industry.

² When a check states on its face that it is "payable through" a bank, that bank is referred to as the "payable through bank." Under the U.C.C., a payable through bank is not named as the payor, but is designated as a "collecting bank to make presentment." U.C.C. 3-120. Under the Board's Regulation J, a payable through bank is the "paying bank." 12 CFR 210.2(f).

disclosure requirements and model forms and clauses of Regulation CC to the Office of Management and Budget ("OMB") for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's Regulations for Controlling Paperwork Burdens on the Public (5 CFR Part 1320). (OMB Docket number: 7100-0234.)

The changes to Regulation CC require modifications to the disclosure requirements and two additional model forms; these are described elsewhere in this notice. These are being submitted to OMB for clearance. Additional supporting documents may be obtained from the OMB clearance officer listed above.

The Board estimates that the amended disclosure requirements will result in an increase in the one-time reporting burden of Regulation CC requirements of approximately 107,000 hours. Approximately 11,000 hours of the increase in reporting burden will be borne by state member banks and other institutions under the Board's jurisdiction.

Any comments on the collection requirements should be sent to the OMB desk officer listed above. OMB's usual practice is not to take any action on an information collection until at least 10 working days after notice in the Federal Register, but occasionally the public interest requires more rapid action.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, effective September 1, 1988, Title 12, Chapter II, Part 229 of the Code of Federal Regulations is amended as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 635; 12 U.S.C. 4001 *et seq.*

2. In § 229.2, paragraphs (r), (s), (z), and (dd) are revised to read as follows:

§ 229.2 Definitions.

(r) "Local check" means a check payable by or at a local paying bank, or a check payable by a nonbank payor and payable through a local paying bank.

(s) "Local paying bank" means a paying bank that is located in the same check processing region as the physical location of—

(1) The branch or proprietary ATM of the depository bank in which that check was deposited; or

(2) Both the branch of the depository bank at which the account is held and the nonproprietary ATM at which the check is deposited.

(z) "Paying bank" means—

(1) The bank by which a check is payable, unless the check is payable at another bank and is sent to the other bank for payment or collection;

(2) The bank at which a check is payable and to which it is sent for payment or collection;

(3) The Federal Reserve Bank or Federal Home Loan Bank by which a check is payable;

(4) The bank through which a check is payable and to which it is sent for payment or collection, if the check is not payable by a bank;

(5) The state or unit of general local government by which a check is payable.

For purposes of Subpart C, and in connection therewith, Subpart A, "paying bank" includes the bank through which a check is payable and to which the check is sent for payment or collection, regardless of whether the check is payable by another bank, and the bank whose routing number appears on a check in fractional or magnetic form and to which the check is sent for payment or collection.

(dd) "Routing number" means—

(1) The number printed on the face of a check in fractional form or in nine-digit form; or

(2) The number in a bank's indorsement in fractional or nine-digit form.

§ 229.16 [Amended]

3. Section 229.16(b)(2) is amended by adding footnote 1 to the end of that paragraph, to read as follows:

¹ No later than December 31, 1988, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose that certain checks, such as some credit union share drafts that are payable by one bank but payable through another bank, will be treated as local or nonlocal checks based upon the location of the bank by which they are payable and not on the basis of the location of the bank whose routing number appears on the check. The statement concerning payable through checks must describe how the customer can determine whether these checks will be treated as local or nonlocal, or state that special rules apply to such checks and that the customer may ask about the availability of these checks.

The statement may be in the form of an attachment or insert to the bank's existing specific policy disclosures. In addition, banks subject to this disclosure requirement must provide a similar notice concerning the payable through checks to existing account customers no later than December 31, 1988. (Even though a bank need not make a disclosure concerning payable through checks until December 31, 1988, the bank must characterize these checks correctly as local or nonlocal checks under amended § 229.2, and provide availability in accordance with §§ 229.11, 229.12, and 229.13, effective September 1, 1988.)

4. In § 229.30, paragraph (a)(1) is revised to read as follows:

§ 229.30 Paying bank's responsibility for return of checks.

(a) * * *

(1) *Two-day/four-day test.* A paying bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depository bank not later than 4:00 p.m. (local time of the depository bank) of—

(i) The second business day following the banking day on which the check was presented to the paying bank, if the paying bank is located in the same check processing region as the depository bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank, if the paying bank is not located in the same check processing region as the depository bank.

If the last business day on which the paying bank may deliver a returned check to the depository bank is not a banking day for the depository bank, the paying bank meets the two-day/four-day test if the returned check is received by the depository bank on or before the depository bank's next banking day.

5. In § 229.31, paragraph (a)(1) is revised to read as follows:

§ 229.31 Returning bank's responsibility for return of checks.

(a) * * *

(1) *Two-day/four-day test.* A returning bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depository bank not later than 4:00 p.m. (local time) of—

(i) The second business day following the banking day on which the check was presented to the paying bank if the paying bank is located in the same check processing region as the depository bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank if the paying bank is not located in the same check processing region as the depository bank.

If the last business day on which the returning bank may deliver a returned check to the depository bank is not a banking day for the depository bank, the returning bank meets this requirement if the returned check is received by the depository bank on or before the depository bank's next banking day.

6. The heading and the first two introductory paragraphs of Appendix A to Part 229 are revised and the third introductory paragraph is removed to read as follows:

Appendix A—Routing Number Guide to Next-Day Availability Checks and Local Checks

Each bank is assigned a routing number by Rank McNally & Co., as agent for the American Bankers Association. The routing number takes two forms: A fractional form and a nine-digit form. A paying bank is generally identified on the face of a check by its routing number in both the fractional form (which generally appears in the upper right-hand corner of the check) and the nine-digit form (which is printed in magnetic ink in a strip along the bottom of the check). Where a check is payable by one bank but payable through another bank, the routing number appearing on the check is that of the payable through bank, not the payor bank.

The first four digits on the nine-digit routing number and the denominator of the fractional routing number form the "Federal Reserve routing symbol," which identifies the Federal Reserve District, the Federal Reserve office, and the clearing arrangements used by the paying bank.

7. Appendix C to Part 229 is amended by adding Models C-19 and C-19A to the end of the appendix to read as follows:

Appendix C—Model Forms, Clauses, and Notices

Model C-19—Payable through checks

In some instances we will treat checks as local or nonlocal based upon the location of the bank by which the check is payable, not on the routing number on the bottom of the check. For example, if a credit union share draft is payable by a credit union that is located in the same check processing region as our bank, the share draft will be treated as a local check, even if the draft is payable through a bank that is located outside of our check processing region as determined by the routing number on the check. If you have any questions about a specific check, please ask your branch manager.

Model C-19A—Payable through checks

Checks that are payable by one bank but are payable through another bank, such as credit union share drafts that are payable through a bank, are considered local or nonlocal based upon the location of the bank by which the check is payable, not the payable through bank whose routing number appears on the check. If the bank by which the payable through check is payable (the credit union in the case of a payable through credit union share draft) is located in the same check processing region as we are, the check will be considered a local check. ((Our check processing region includes * * *) or (A map of our check processing region is (attached) (available upon request).)) If you would like to know whether a particular check falls into this category, you may ask your branch manager for assistance.

Appendix E—[Amended]

8. Appendix E—Commentary to Part 229 is amended as follows:

a. The commentary on § 229.2 (o), (r), (s), and (z) is revised to read as follows:

Section 229.2 Definitions

(o) *Depository bank.* The regulation uses the term depository bank rather than the term "receiving depository institution." "Receiving depository institution" is a term unique to the Act, while "depository bank" is the term used in Article 4 of the U.C.C. and Regulation J.

A depository bank includes the bank in which the check is first deposited. If a foreign office of a U.S. or foreign bank sends checks to its U.S. correspondent bank for forward collection, the U.S. correspondent is the depository bank since foreign offices of banks are not included in the definition of bank.

If a customer deposits a check in its account at a bank, the customer's bank is the depository bank with respect to the check. For example, if a person deposits a check into an account at a nonproprietary ATM, the bank holding the account into which the check is deposited is the depository bank even though another bank may service the nonproprietary ATM and send the check for collection. (Under § 229.35 the depository bank may agree with the bank servicing the nonproprietary ATM to have the servicing bank place its own indorsement on the check as the depository bank. For the purposes of Subpart C, the bank applying its indorsement as the depository bank indorsement on the check is the depository bank.)

For purposes of Subpart B, a bank may act as both the depository bank and the paying bank with respect to a check, if the check is payable by the bank in which it was deposited, or if the check is payable by a nonbank payor and payable through or at the bank in which it was deposited. A bank is also considered a depository bank with respect to checks it receives as payee. For example, a bank is a depository bank with respect to checks it receives for loan repayment, even though these checks are not deposited in an account at the bank. Because these checks would not be "deposited to accounts," they would not be subject to the

availability or disclosure requirements of Subpart B.

(r) *Local check* is defined as a check payable by or at a local paying bank, or, in the case of nonbank payors, payable through a local paying bank. A check payable by a local bank but payable through a nonlocal bank is a local check. Conversely, a check payable through a local bank but payable by a nonlocal bank is a nonlocal check. Where two banks are named on a check and neither is designated as a payable through bank, the check is considered payable by either bank and may be considered local or nonlocal depending on which bank it is sent to for payment. Generally, the depository bank may rely on the routing number to determine whether a check is local or nonlocal.

Appendix A includes a list of routing numbers arranged by Federal Reserve Bank Office to assist persons in determining whether or not such a check is local. If, however, a check is payable by one bank but payable through another bank, the routing number appearing on the check will be that of the payable through bank, not the paying bank. Many credit union share drafts and certain other checks payable by banks are payable through other banks. In such cases, the routing number cannot be relied on to determine whether the check is local or nonlocal. In a few cases, a payable through bank will be designated only by routing numbers and will not be named on the check. In such cases also, the routing number may not be relied on to determine whether the check is local or nonlocal.

(s) *Local paying bank* is defined as a paying bank located in the same check processing region as the branch or proprietary ATM of the depository bank.

Examples

1. If a check that is payable by a bank that is located in the same check processing region as the depository bank is payable through a bank located in another check processing region, the check is considered local or nonlocal depending on the location of the bank by which it is payable even if the check is sent to the nonlocal bank for collection.

2. The location of the depository bank is determined by the physical location of the branch or proprietary ATM at which a check is deposited. If the branch of the depository bank located in one check processing region sends a check to the depository bank's central facility in another check processing region, and the central facility is in the same check processing region as the paying bank, the check is still considered nonlocal. (See Commentary on definition of "paying bank".)

For deposits at nonproprietary ATMs, a paying bank is a local paying bank only if the paying bank is located in the same check processing region as the location of both the branch of the depository bank at which the account is held and the nonproprietary ATM at which the check is deposited.

(z) *Paying bank.* The regulation uses this term in lieu of the Act's "originating depository institution." For purposes of

Subpart B, the term "paying bank" includes the payor bank, the payable at bank to which a check is sent, or, if the check is payable by a nonbank payor, the bank through which the check is payable and to which it is sent for payment or collection. For purposes of Subpart C, the term includes the payable through bank and the bank whose routing number appears on the check regardless of whether the check is payable by a different bank, provided that the check is sent for payment or collection to the payable through bank or the bank whose routing number appears on the check.

Under §§ 229.30 and 229.36(a), a bank designated as a "payable through bank" or "payable at bank" and to which the check is sent for payment or collection is responsible for the expedited return of checks and notice of nonpayment requirements of Subpart C. The payable through or payable at bank may contract with the payor with respect to its liability in discharging these responsibilities. The Board believes that the Act makes a clear connection between availability and the time it takes for checks to be cleared and returned. Allowing the payable through bank additional time to forward checks to the payor and await return or pay instructions from the payor would delay the return of these checks, increasing the risks to depositary banks. Subpart C places on payable through and payable at banks the requirements of expeditious return based on the time the payable through or payable at bank received the check for forward collection.

If a check is sent for forward collection based on the routing number, the bank associated with the routing number is a paying bank for the purposes of Subpart C requirements, including notice of nonpayment, even if the check is not drawn by a customer of that bank or the check is fraudulent.

The phrase "and to which [the check] is sent for payment or collection" includes sending not only the physical check, but information regarding the check under a truncation arrangement.

Federal Reserve Banks and Federal Home Loan Banks are also paying banks under all subparts of the regulation with respect to checks payable by them, even though such banks are not defined as banks for purposes of Subpart B.

b. The Commentary on § 229.11(c) is amended by adding a paragraph at the end immediately preceding (d) to read as follows:

Section 229.11 Temporary Availability Schedule

(c) * * *

A reduction in schedules may apply even in those cases where the determination that the check is nonlocal cannot be made based on the routing number on the check. For example, a nonlocal credit union payable through share draft may be subject to a reduction in schedules if the routing number of the payable through bank which appears on the draft is included in Appendix B, even though the determination that the payable

through share draft is nonlocal is based on the location of the credit union and not the routing number on the draft.

c. The Commentary on § 229.21(c) is amended by removing the period at the end of the paragraph and adding the following language:

Section 229.21 Civil liability

(c) * * *
; or if it fails to identify whether a payable through check is a local or nonlocal check despite procedures designed to make this determination accurately.

d. The Commentary on § 229.30 is amended by revising the introductory paragraphs of (a) and the complete text of (a)(1) to read as follows:

Section 229.30 Paying Bank's Responsibility for Return of Checks

(a) *Return of checks.* This section requires a paying bank (which, for purposes of Subpart C, may include a payable through and payable at bank; see § 229.2(z)) that determines not to pay a check to return the check expeditiously. Generally, a check is returned expeditiously if the return process is as fast as the forward collection process. This paragraph provides two standards for expeditious return, the "two-day/four-day" test, and the "forward collection" test.

Under the "two-day/four-day" test, if a check is returned such that it would normally be received by the depositary bank two business days after presentment where both the paying and depositary banks are located in the same check processing region or four business days after presentment where the paying and depositary banks are not located in the same check processing region, the check is considered returned expeditiously. In certain limited cases, however, these times are shorter than the time it would normally take a forward collection check deposited in the paying bank and payable by the depositary bank to be collected. Therefore, the Board has included a "forward collection" test, whereby a check is nonetheless considered to be returned expeditiously if the paying bank uses transportation methods and banks for return comparable to those used for forward collection checks, even if the check is not received by the depositary banks within the two-day or four-day period.

(1) *Two-day/four-day test.* Under the first test, a paying bank must return the check so that the check would normally be received by the depositary bank within specified times, depending on whether or not the paying and depositary banks are located in the same check processing region.

Where both banks are located in the same check processing region, a check is returned expeditiously if it is returned to the depositary bank by 4:00 p.m. (local time of the depositary bank) of the second business day after the banking day on which the check was presented to the paying bank. For example, a check presented on Monday to a

paying bank must be returned to a depositary bank located in the same check processing region by 4:00 p.m. on Wednesday. For a paying bank that is located in a different check processing region than the depositary bank, the deadline to complete return is 4:00 p.m. (local time of the depositary bank) of the fourth business day after the banking day on which the check was presented to the paying bank. For example, a check presented to such a paying bank on Monday must be returned to the depositary bank by 4:00 p.m. on Friday.

This two-day/four-day test does not necessarily require actual receipt of the check by the depositary bank within these times. Rather, the paying bank must send the check so that the check would normally be received by the depositary bank within the specified time. Thus, the paying bank is not responsible for unforeseeable delays in the return of the check, such as transportation delays.

Often, returned checks will be delivered to the depositary bank together with forward collection checks. Where the last day on which a check could be delivered to a depositary bank under this two-day/four-day test is not a banking day for the depositary bank, a returning bank might not schedule delivery of forward collection checks to the depositary bank on that day. Further, the depositary bank may not process checks on that day. Consequently, if the last day of the time limit is not a banking day for the depositary bank, the check may be delivered to the depositary bank before the close of the depositary bank's next banking day and the return will still be considered expeditious. Ordinarily, this extension of time will allow the returned checks to be delivered with the next shipment of forward collection checks destined for the depositary bank.

The times specified in this two-day/four-day test are based on estimated forward collection times, but take into account the particular difficulties that may be encountered in handling returned checks. It is anticipated that the normal process for forward collection of a check coupled with these return requirements will frequently result in the return of checks before the proceeds of local and nonlocal checks, other than those covered by § 229.10(c), must be made available for withdrawal under the temporary schedules in § 229.11.

Under this two-day/four-day test, no particular means of returning checks is required, thus providing flexibility to paying banks in selecting means of return. The Board anticipates that paying banks will often use returning banks (see § 229.31) as their agents to return checks to depositary banks. A paying bank may rely on the availability schedule of the returning bank it uses in determining whether the returned check would "normally" be returned within the required time under this two-day/four-day test, unless the paying bank has reason to believe that these schedules do not reflect the actual time for return of a check.

e. The Commentary on § 229.31(a) is amended by revising the paragraphs up to the examples to read as follows:

Section 229.31 Returning Bank's Responsibility for Return of Checks

(a) *Return of checks.* The standards for return of checks established by this section are similar to those for paying banks in § 229.30(a). This section requires a returning bank to return a returned check expeditiously if it agrees to handle the returned check for expeditious return under this paragraph. In effect, the returning bank is an agent or subagent of the paying bank and a subagent of the depository bank for the purposes of returning the check. A returning bank agrees to handle a returned check for expeditious return to the depository bank if it:

- (1) Publishes or distributes availability schedules for the return of returned checks and accepts the returned check for return;
- (2) Handles a returned check for return that it did not handle for forward collection; or
- (3) Otherwise agrees to handle a returned check for expeditious return.

As in the case of a paying bank, a returning bank's return of a returned check is expeditious if it meets either of two tests. Under the "two-day/four-day" test, the check must be returned so that it would normally be received by the depository bank by 4:00 p.m. either two or four business days after the check was presented to the paying bank, depending on whether or not the paying bank is located in the same check processing region as the depository bank. This is the same test as the two-day/four-day test applicable to paying banks. (See Commentary to § 229.30(a).) While a returning bank will not have first hand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, allocate with paying banks liability for late return based on the delays caused by each. In effect, the two-day/four day test protects all paying and returning banks that return checks from claims that they failed to return a check expeditiously, where the check is returned within the specified time following presentation to the paying bank, or a later time as would result from unforeseen delays.

The "forward collection" test is similar to the forward collection test for paying banks. Under this test, a returning bank must handle a returned check in the same manner that a similarly situated collecting bank would handle a check of similar size drawn on the depository bank for forward collection. A similarly situated bank is a bank (other than a Federal Reserve Bank) that is of similar asset size and check handling activity in the same community. A bank has similar check handling activity if it handles a similar volume of checks for forward collection as the forward collection volume of the returning bank.

Under the forward collection tests, a returning bank must accept returned checks, including both qualified and other returned checks ("raw returns"), at approximately the same times and process them according to the same general schedules as checks handled for forward collection. Thus, a returning bank generally must process even raw returns on an overnight basis, unless its time limit is extended by one day to convert a raw return to a qualified returned check.

A returning bank may establish earlier cut-off hours for receipt of returned checks than for receipt of forward collection checks, but the cut-off hour for returned checks may not be earlier than 2:00 p.m. The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank may allow itself more processing time for returns than for forward collection checks. All returned checks received by a cut-off hour for returned checks must be processed and dispatched by the returning bank by the time that it would dispatch forward collection checks received at a corresponding forward collection cut-off hour that provides for the same or faster availability for checks destined for the same depository banks.

f. The Commentary to § 229.36 is amended by revising the complete text of (a) and (b) to read as follows:

Section 229.36 Presentment of Checks

(a) *Payable through and payable at checks.* For purposes of Subpart C, the regulation defines a payable through or payable at bank (which could be designated the collectible through or collectible at bank) as a paying bank. The requirements of § 229.30(a) and the notice of nonpayment requirements of § 229.33, are imposed on a payable through or payable at bank and are based on the time of receipt of the forward collection check by the payable through or payable at bank. This provision is intended to speed the return of checks that are payable through or at a bank to the depository bank.

(b) *Receipt at bank office or processing center.* This paragraph seeks to facilitate efficient presentment of checks to promote early return or notice of nonpayment to the depository bank, and clarifies the law as to the effect of presentment by routing number. This paragraph differs from § 229.39(b) because presentment of checks differs from delivery of returned checks.

The paragraph specifies four locations at which the paying bank must accept presentment of checks. Where the check is payable through a bank and the check is sent to that bank, the payable through bank is the paying bank for purposes of this subpart, regardless of whether the paying bank must present the check to another bank or to a nonbank payor for payment.

1. Delivery of checks may be made, and presentment is considered to occur, at a location (including a processing center) requested by the paying bank. This is the way most checks are presented by banks today. This provision adopts the common law rule of a number of legal decisions that the processing center acts as the agent of the paying bank to accept presentment and to begin the time for processing of the check. (See also U.C.C. 4-204(3).) If a bank designates different locations for the presentment of forward collection checks bearing different routing numbers, for purposes of this paragraph it only requests presentment of checks bearing a particular routing number at the location designated for receipt of forward collection checks bearing that routing number.

2. Delivery may be made at an office of the bank associated with the routing number on the check. The office associated with the routing number of a bank is found in a publication of Rand McNally, *Key to Routing Numbers*, which lists a city and state address for each routing number. Checks are generally handled by collecting banks on the basis of the nine-digit routing number encoded in magnetic ink (or on the basis of the fractional form routing number if the magnetic ink characters are obliterated) on the check, rather than the printed name or address. The definition of a paying bank in § 229.2(z) includes a bank designated by routing number, whether or not there is a name on the check, and whether or not any name is consistent with the routing number. Where a check is payable by one bank, but payable through another, the routing number is that of the payable through bank, not that of the payor bank. As the payor bank has selected the payable through bank as the point through which presentment is to be made, it is proper to treat the payable through bank as the paying bank for purposes of this section.

There is no requirement in the regulation that the name and address on the check agree with the address associated with the routing number on the check. A bank may generally control the use of its routing number, just as it does the use of its name. The address associated with the routing number may be a processing center.

In some cases, a paying bank may have several offices in the city associated with the routing number. In such case, it would not be reasonable or efficient to require the presenting bank to sort the checks by more specific branch addresses that might be printed on the checks, and to deliver the checks to each branch. A collecting bank would normally deliver all checks to one location. In cases where checks are delivered to a branch other than the branch on which they may be drawn, computer and courier communication among branches should permit the paying bank to determine quickly whether to pay the check.

3. If the check specifies the name of the paying bank but no address, the bank must accept delivery at any office. Where delivery is made by a person other than a bank, or where the routing number is not readable, delivery will be made based on the name and address of the paying bank on the check. If there is no address, delivery may be made at any office of the paying bank. This provision is consistent with U.C.C. 3-504(2), which states that presentment for payment may be made at the place specified in the instrument, or, if there is none, at the place of business of the party to pay. Thus, there is a trade-off for a paying bank between specifying a particular address on a check to limit locations of delivery, and simply stating the name of the bank to encourage wider currency for the check.

4. If the check specifies the name and address of a branch or head office, or other location (such as a processing center), the check may be delivered by delivery to that office or other location. If the address is too general to identify a particular office,

delivery may be made at any office consistent with the address. For example, if the address is "San Francisco, California," each office in San Francisco must accept presentation. The designation of an address on the check is generally in the control of the paying bank.

This paragraph may affect U.C.C. 3-504(2)(c) to the extent that the U.C.C. requires presentation to occur at a place specified in the instrument.

g. The Commentary on Appendix C to Part 229 is amended as follows:

(1) Add a paragraph at the end of the text titled "Models C-1 through C-7 generally" and before the text beginning with "Model C-1".

(2) Add Commentary on Models C-19 and C-19A to the end of the appendix.

Appendix C—Model Forms, Clauses, and Notices

Models C-1 through C-7 generally. * * *

In addition, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check (as set forth in model forms C-4 through C-7) must disclose that certain checks, such as credit union share drafts that are payable through a bank, will be treated as local or nonlocal based upon the location of the payor bank and not on the basis of the routing number on the check. Model C-19 or C-19A could be incorporated into model forms C-4 through C-7 to meet this requirement.

Model C-19 and C-19A. Either of these statements satisfies the requirements set forth in the footnote to § 229.16(b)(2) concerning payable through checks. The statements are both model clauses and notices in that they may be added to a bank's specific policy disclosure to describe how the bank treats payable through checks, and may be used as the notice that must be sent to existing customers no later than December 31, 1988, if the bank's specific policy disclosure given to the customers did not accurately reflect the treatment of payable through checks.

By order of the Board of Governors of the Federal Reserve System, August 12, 1988.

William W. Wiles,
Secretary of the Board

[FR Doc. 88-18702 Filed 8-17-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-44-AD; Amdt. 39-6005]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Clarification of final rule.

SUMMARY: This action clarifies an existing airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, equipped with General Electric engines, without a secondary cowl door latching system. The model identification of the affected engines was not specified in the applicability statement of the AD. This clarification is necessary to identify properly the affected airplanes.

EFFECTIVE DATE: September 8, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-88966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On May 11, 1988, the FAA issued AD 88-11-10, Amendment 39-5931 (53 FR 18076; May 20, 1988), which requires a daily security check for each engine core cowl door, after it is open and subsequently closed, until a secondary latching system is installed. That action was prompted by several reported incidents where the engine core cowl doors have separated from airplanes equipped with this engine core cowl door design, due to failure of the latching device. This condition, if not corrected, could result in separation of the door, which, in turn, could cause structural damage to the airplane.

That AD was made effective to all Airbus Industrie Model A300 series equipped with General Electric engines without a secondary cowl door latching system. Since issuance of that AD, the FAA has received reports that, due to certain configurations of the engines, the required inspection is applicable only to airplanes equipped with General Electric CF6-50 engines. Accordingly, the FAA has determined that the applicability of the existing AD must be clarified to specify the engine model, and action is taken herein to make this clarification.

Since this action only clarifies information in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Clarification

Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration clarifies § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By clarifying the applicability statement of AD 88-11-10, Amendment 39-5931 (53 FR 18076; May 20, 1988), as follows:

Airbus Industrie: Applies to Model A300 series airplanes, equipped with General Electric CF6-50 engines, without a secondary latching system on core cowl doors, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural damage to the airplane due to engine core cowl door separation, accomplish the following:

A. Within 10 days after the effective date of this AD, check the core cowl door latches of each engine once each day, and re-check after each core cowl door is opened and subsequently closed.

1. If the latch is open, before further flight, properly close the latch.

2. If the latch will not engage, adjust the latch, in accordance with the A300 maintenance manual.

3. If the latch cannot be properly adjusted, replace the latch prior to further flight.

B. The checks required by paragraph A., above, may be discontinued after a secondary latching system is installed, in accordance with Airbus Industrie Service Bulletin A300-71-053, Revision 2, dated January 6, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer, may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office,

9010 East Marginal Way South, Seattle, Washington.

This clarification becomes effective September 6, 1988.

Issued in Washington, DC, on August 11, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-18735 Filed 8-17-88; 8:45 a.m.]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ANM-16]

Alteration of Control Zone and Transition Area; Casper, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: These amendments change the description of the Casper, Wyoming Control Zone and Transition Area. The Casper very high frequency omnidirectional radio range and tactical air navigation aid (VORTAC) is not located on the Casper Airport. According to FAA guidelines, navigational aids (NAVIDS) not located within the confines of the airport boundaries should not retain that airport's name. Therefore, the Casper VORTAC has been renamed Muddy Mountain VORTAC. This action amends the Control Zone and Transition Area descriptions where "Casper" appears to read "Muddy Mountain."

DATES: Effective date—0901 UTC, October 20, 1988.

Comments must be received on or before October 5, 1988.

ADDRESSES: Send comments on the rule to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-16, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM-535, Federal Aviation Administration, Docket No. 88-ANM-16, 17900 Pacific Highway South, C-68966,

Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although these actions are in the form of a final rule, which involves amending the descriptions of the Casper, Wyoming Control Zone and Transition Area that currently have "Casper" in their descriptions to read "Muddy Mountain", and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of these amendments to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to amend the descriptions of the Casper, Wyoming Control Zone and Transition Area to read "Muddy Mountain" where "Casper" appears. The circumstances which create the need for this amendment involve matters of flight safety, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is contrary to the public interest.

Section(s) 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

By removing "Casper" wherever it appears and substituting "Muddy Mountain."

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

By removing "Casper" wherever it appears and substituting "Muddy Mountain."

Issued in Seattle, Washington, on August 5, 1988.

Francis E. Davis,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88-18736 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 95

[Docket No. 25675; Amdt. No. 345]

IFR Altitudes; Miscellaneous Amendments**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that

route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on August 11, 1988.

Robert L. Goodrich,
Director of Flight Standards.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 345 EFFECTIVE DATE, AUGUST 25, 1988

FROM	TO	MEA	FROM	TO	MEA
§			§95.6002 VOR FEDERAL AIRWAY 2		
§95.1001 DIRECT ROUTES-U.S.95.239 RED FEDERAL AIRWAY 39			IS AMENDED TO READ IN PART		
IS AMENDED TO READ IN PART			CLUNG, NY FIX	MONCK, NY FIX	6000
			ALBANY, NY VORTAC	MELRO, NY FIX	10000
			MELRO, NY FIX	*GRISY, MA FIX	10000
			*10000 - MCA GRISY FIX, W BND		
MINCHUMINA, AK NDB	ICE POOL, AK NDB	4000	§95.6006 VOR FEDERAL AIRWAY 6		
§95.1001 DIRECT ROUTES-U.S.			IS AMENDED TO READ IN PART		
IS AMENDED TO READ IN PART			SELINGSGROVE, PA VORTAC	ALLENTOWN, PA VORTAC	4000
BUFFALO, NY VORTAC	U.S. CANADIAN BORDER	3000	ALLENTOWN, PA VORTAC	SOLBERG, NJ VORTAC	3000
BAHAMA ROUTES			§95.6012 VOR FEDERAL AIRWAY 12		
21V IS AMENDED BY ADDING			IS AMENDED TO READ IN PART		
FREEPORT, BF VOR/DME	*WALIK, FL FIX	**4000	WINSLOW, AZ VORTAC	ZUNI, NM VORTAC	9000
*6000 - MRA		MAA-45000	FRANC, MO FIX	COLUMBIA, MO VOR/DME	2600
**1300 - MOCA			COLUMBIA, MO VOR/DME	STITH, MO FIX	*2600
*WALIK, FL FIX	PALM BEACH, FL VORTAC	**2000	*2000 - MOCA		
*6000 - MRA		MAA-45000	STITH, MO FIX	FORISTELL, MO VORTAC	2600
**1600 - MOCA			§95.6014 VOR FEDERAL AIRWAY 14		
68V			IS AMENDED TO READ IN PART		
FORT LAUDERDALE, FL VOR/DME	ABBER, FL FIX	2000	FORISTELL, MO VORTAC	ST LOUIS, MO VORTAC	2600
		MAA-45000	ST LOUIS, MO VORTAC	VANDALIA, IL VORTAC	2500
ABBER, FL FIX	MUNRO, BF FIX	*4000	ALBANY, NY VORTAC	MELRO, NY FIX	10000
*1200 - MOCA		MAA-45000	MELRO, NY FIX	*GRISY, MA FIX	10000
MUNRO, BF FIX	FREEPORT, BF VOR/DME	*2000	*10000 - MCA GRISY FIX, W BND		
*1200 - MOCA		MAA-45000	§95.6023 VOR FEDERAL AIRWAY 23		
MARSH HARBOUR, BF NDB	NETTA, BF FIX	*2000	IS AMENDED TO READ IN PART		
*1200 - MOCA		MAA-45000	CLOVIS, CA VORTAC	BEREN, CA FIX	2100
NETTA, BF FIX	NASSAU, BF VOR/DME	*4000	BEREN, CA FIX	WRAPS, CA FIX	*4000
*1500 - MOCA		MAA-45000	*3000 - MOCA		
IS AMENDED TO READ IN PART			WRAPS, CA FIX	LINDEN, CA VORTAC	3000
FREEPORT, BF VOR/DME	DEERS, BF FIX	*2000	§95.6044 VOR FEDERAL AIRWAY 44		
*1200 - MOCA		MAA-45000	IS AMENDED TO READ IN PART		
DEERS, BF FIX	TREASURE CAY, BF VOR/DME	*2000	COLUMBIA, MO VOR/DME	HODGS, MO FIX	2800
*1200 - MOCA		MAA-45000	HODGS, MO FIX	FORISTELL, MO VORTAC	*2800
TREASURE CAY, BF VOR/DME	MARSH HARBOUR, BF NDB	*2000	*2200 - MOCA		
*1200 - MOCA		MAA-45000	§95.6063 VOR FEDERAL AIRWAY 63		
69V			IS AMENDED TO READ IN PART		
FREEPORT, BF VOR/DME	BENZI, BF FIX	*4000	SPRINGFIELD, MO VORTAC	*ROACH, MO FIX	3000
*1200 - MOCA		MAA-45000	*3200 - MRA		
BENZI, BF FIX	PALM BEACH, FL VORTAC	*4000			
*1600 - MOCA		MAA-45000			

FROM TO MEA
§95.6063 VOR FEDERAL AIRWAY 63—Continued

BARTI, MO FIX	GIBSN, MO FIX	3000
GIBSN, MO FIX	HALLSVILLE, MO VORTAC	2700

§95.6068 VOR FEDERAL AIRWAY 68
 IS AMENDED TO READ IN PART

TATAR, TX FIX	SAN ANTONIO, TX VORTAC	4000
INDUSTRY, TX VORTAC	SEALY, TX FIX	2000
SEALY, TX FIX	HOBBY, TX VOR/DME	2000

§95.6076 VOR FEDERAL AIRWAY 76
 IS AMENDED TO READ IN PART

INDUSTRY, TX VORTAC	SEALY, TX FIX	2000
SEALY, TX FIX	HOBBY, TX VOR/DME	2000

§95.6155 VOR FEDERAL AIRWAY 155
 IS AMENDED TO READ IN PART

FLAT ROCK, VA VORTAC	BROOKE, VA VORTAC	2000
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§95.6175 VOR FEDERAL AIRWAY 175
 IS AMENDED TO READ IN PART

MALDEN, MO VORTAC *3000 - MOCA	BUNKS, MO FIX	*4000
VICHY, MO VORTAC *2400 - MOCA	ZIPUR, MO FIX	*3000
ZIPUR, MO FIX	HALLSVILLE, MO VORTAC	2600

§95.6178 VOR FEDERAL AIRWAY 178
 IS AMENDED TO READ IN PART

HALLSVILLE, MO VORTAC	BNTON, MO FIX	2800
BNTON, MO FIX *2200 - MOCA	VICHY, MO VORTAC	*2800

§95.6198 VOR FEDERAL AIRWAY 198
 IS AMENDED TO READ IN PART

TATAR, TX FIX	SAN ANTONIO, TX VORTAC	4000
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FROM TO MEA
§95.6205 VOR FEDERAL AIRWAY 205
 IS AMENDED TO READ IN PART

BRADLEY, CT VORTAC *2300 - MOCA	PUTNAM, CT VOR/DME	*3000
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§95.6222 VOR FEDERAL AIRWAY 222
 IS AMENDED TO READ IN PART

INDUSTRY, TX VORTAC	SEALY, TX FIX	2000
SEALY, TX FIX	HUMBLE, TX VORTAC	2000

§95.6229 VOR FEDERAL AIRWAY 229
 IS AMENDED TO READ IN PART

MORTN, NJ FIX	DIXIE, NJ FIX	3000
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§95.6239 VOR FEDERAL AIRWAY 239
 IS AMENDED TO READ IN PART

BNTON, MO FIX	HALLSVILLE, MO VORTAC	2800
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§95.6426 VOR FEDERAL AIRWAY 426
 IS AMENDED TO DELETE

ST LOUIS, MO VORTAC	GIFTS, IL FIX	2500
GIFTS, IL FIX *2100 - MOCA	PAMER, IL FIX	*4000

§95.6438 VOR FEDERAL AIRWAY 438
 IS AMENDED TO READ IN PART

DIFER, AK FIX VIA E ALTER.	FORT YUKON, AK VORTAC VIA E ALTER.	2300
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§95.6504 VOR FEDERAL AIRWAY 504
 IS AMENDED TO DELETE

NAPOLEON, MO VORTAC *4000 - MRA	*OCTAM, MO FIX	2700
OCTAM, MO FIX *2100 - MOCA	FRANC, MO FIX	*2700
FRANC, MO FIX	HYPOE, MO FIX	4000
HYPOE, MO FIX	JEFFERSON CITY, MO VOR/DME	2600
JEFFERSON CITY, MO VOR/DME	GUTHS, MO FIX	3000
GUTHS, MO FIX	RAPPE, MO FIX	4000
RAPPE, MO FIX	HEMAN, MO FIX	2600
HEMAN, MO FIX *2200 - MOCA	FORISTELL, MO VORTAC	*2700

FROM	TO	MEA	MAA
§95.7030 JET ROUTE NO. 30			
IS AMENDED TO READ IN PART			
APPLETON, OH VORTAC	BUCKO, WV FIX	20000	39000
§95.7036 JET ROUTE NO. 36			
IS AMENDED TO READ IN PART			
DUNKIRK, NY VORTAC	MINEO, PA FIX	18000	45000
MINEO, PA FIX	LAKE HENRY, PA VORTAC	18000	23000
§95.7037 JET ROUTE NO. 37			
IS AMENDED TO READ IN PART			
GORDONSVILLE, VA VORTAC	BROOKE, VA VORTAC	18000	45000
BROOKE, VA VORTAC	COYLE, NJ VORTAC	18000	45000
§95.7064 JET ROUTE NO. 64			
IS AMENDED TO READ IN PART			
FARMINGTON, NM VORTAC	PUEBLO, CO VORTAC	20000	45000
PUEBLO, CO VORTAC	HILL CITY, KS VORTAC	18000	45000
§95.7082 JET ROUTE NO. 82			
IS AMENDED TO READ IN PART			
JAMESTOWN, NY VOR/DME	ALBANY, NY VORTAC	18000	40000
§95.7102 JET ROUTE NO. 102			
IS AMENDED TO READ IN PART			
ZUNI, NM VORTAC	GALLUP, NM VORTAC	18000	45000
GALLUP, NM VORTAC	ALAMOSA, CO VORTAC	18000	45000
§95.7142 JET ROUTE NO. 142			
IS AMENDED TO READ IN PART			
SOCORRO, NM VORTAC	ANTON CHICO, NM VORTAC	18000	45000
ANTON CHICO, NM VORTAC	BORGER, TX VORTAC	18000	45000
§95.7186 JET ROUTE NO. 186			

FROM	TO	MEA	MAA
§95.7186 JET ROUTE NO. 186—Continued			
IS AMENDED TO READ			
TOCCOA, GA VORTAC	SNOWBIRD, TN VORTAC	18000	45000
SNOWBIRD, TN VORTAC	APPLETON, OH VORTAC	18000	45000
§95.7197 JET ROUTE NO. 197			
IS AMENDED TO READ IN PART			
DOVE CREEK, CO VORTAC	HUGO, CO VORTAC	#33000	45000
#MEA IS ESTABLISHED WITH GAP 95-115 NM FROM DOVE CREEK.			
HUGO, CO VORTAC	GOODLAND, KS VORTAC	18000	45000
§95.7231 JET ROUTE NO. 231			
IS ADDED TO READ			
ST JOHNS, AZ VORTAC	ANTON CHICO, NM VORTAC	18000	45000
ANTON CHICO, NM VORTAC	LIBERAL, KS VORTAC	18000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
V-2			
IS AMENDED TO DELETE			
BUFFALO, NY VORTAC	ROCHESTER, NY VORTAC	34	BUFFALO
V-23			
IS AMENDED TO READ IN PART			
CLOVIS, CA VORTAC	LINDEN, CA VORTAC	42	CLOVIS
V-68			
IS AMENDED BY ADDING			
JUNCTION, TX VORTAC	SAN ANTONIO, TX VORTAC	51	JUNCTION
V-198			
IS AMENDED BY ADDING			
JUNCTION, TX VORTAC	SAN ANTONIO, TX VORTAC	51	JUNCTION

§95.8005 JET ROUTES CHANGE OVER POINTS

AIRWAY SEGMENT		CHANGE OVER POINTS	
FROM	TO	DISTANCE	FROM
J-36			
IS AMENDED BY ADDING			
DUNKIRK, NY VORTAC	LAKE HENRY, PA VORTAC	130	DUNKIRK
J-64			
IS AMENDED BY ADDING			
FARMINGTON, NM VORTAC	PUEBLO, CO VORTAC	93	FARMINGTON
J-197			
IS AMENDED BY ADDING			
DOVE CREEK, CO VORTAC	HUGO, CO VORTAC	105	DOVE CREEK
J-220			
IS AMENDED TO READ IN PART			
ARMEL, VA VORTAC	STONYFORK, PA VORTAC	122	ARMEL

[FR Doc. 88-18737 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-13-C

14 CFR Part 97

[Docket No. 25672; Amdt. No. 1780]

Standard Instrument Approach Procedures; Miscellaneous Amendments**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures

Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these

SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedures before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on August 5, 1988.

Robert L. Goodrich,
Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(e), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

... Effective October 20, 1988

Lincoln, IL—Logan Country, VOR RWY 3, Amdt. 5
 Lincoln, IL—Logan Country, NDB RWY 21, Amdt. 5
 Wahoo, NE—Wahoo Muni, NDB RWY 20, Amdt. 2

... Effective October 6, 1988

Bismarck, ND—Bismarck Muni, VOR-A, Amdt. 19
 Bismarck, ND—Bismarck Muni, NDB RWY 31, Amdt. 30
 Bismarck, ND—Bismarck Muni, ILS RWY 13, Amdt. 2
 Bismarck, ND—Bismarck Muni, ILS RWY 31, Amdt. 32
 Bismarck, ND—Radar-1, Amdt. 1

... Effective September 22, 1988

San Francisco, CA—San Francisco Intl, ILS RWY 28L, Amdt. 18
 San Francisco, CA—San Francisco Intl, ILS RWY 28R, Amdt. 8
 Cadillac, MI—Wexford County, NDB RWY 7, Amdt. 10, CANCELLED
 Cadillac, MI—Wexford County, NDB RWY 7, Orig.
 Cadillac, MI—Wexford County, NDB RWY 25, Amdt. 6, CANCELLED
 Cadillac, MI—Wexford County, NDB RWY 25, Orig.
 Cadillac, MI—Wexford County, MLS RWY 25, Amdt. 3
 Cadillac, MI—Wexford County, RNAV RWY 7, Amdt. 6
 Cadillac, MI—Wexford County, RNAV RWY 25, Amdt. 5
 Fremont, NE—Fremont Muni, NDB RWY 13, Amdt. 5
 Plattsmouth, NE—Plattsmouth Muni, NDB RWY 34, Amdt. 3
 Wayne, NE—Wayne Muni, NDB RWY 22, Amdt. 2
 Shirley, NY—Brookhaven, ILS RWY 6, Orig.
 Marion, OH—Marion Muni, VOR RWY 24, Amdt. 5
 Marion, OH—Marion Muni, NDB RWY 12, Amdt. 3
 Newport, RI—Newport State, LOC RWY 22, Amdt. 4
 Greer, SC—Greenville-Spartanburg, ILS RWY 3, Amdt. 19
 Brownwood, TX—Brownwood Muni, VOR RWY 17, Amdt. 10
 Brownwood, TX—Brownwood Muni, VOR/DME RWY 35, Orig.
 Brownwood, TX—Brownwood Muni, LOC RWY 17, Amdt. 3
 Fort Worth, TX—Oak Grove VOR/DME-A, Amdt. 2, CANCELLED
 Fort Worth, TX—Oak Grove, RNAV RWY 35, Orig., CANCELLED

... Effective July 28, 1988

Culpeper, VA—Culpeper Country, NDB-A, Amdt. 1

The FAA published an Amendment in Docket No. 25841, Amdt. No. 1377 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 133, Page 26234; dated Tuesday, July 12, 1988) under § 97.25 effective August 25, 1988, which is hereby amended as follows:
 Roxboro, NC—Person County, LOC RWY 6, Orig., EFF August 25, 1988 is hereby rescinded.

The FAA published an Amendment in Docket No. 25668, Amdt. No. 1379 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 148, Page 29001; dated Tuesday, August 21, 1988, under § 97.27 effective September 22, 1988 which is hereby amended as follows:

Shishmaref, New Shishmaref, NDB RWY 5, Orig.
 Shishmaref, New Shishmaref, NDB RWY 23, Orig., effective dates should read October 20, 1988.

[FR Doc. 88-18738 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. 9149]

**Ogilvy & Mather International, Inc.;
 Prohibited Trade Practices and
 Affirmative Corrective Actions**

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified a portion of a 1983 consent order (48 FR 2316) with The Ogilvy Group, Inc., formerly Ogilvy & Mather International, Inc., the advertising agency for Thompson Medical Co., Inc., the makers of the topically applied analgesic "Aspercreme", by making two modifications in accordance with paragraph eight of the consent order so that the Ogilvy order matches the language in the Thompson order.

DATES: Consent Order issued Jan. 4, 1983. Modified Order issued May 24, 1988.

FOR FURTHER INFORMATION CONTACT:
 Justin Dingfelder or Terrence Boyle,
 FTC/S-4631, Washington, DC 20580.
 (202) 326-3017 or 326-3016.

SUPPLEMENTARY INFORMATION: In the Matter of Ogilvy & Mather International, Inc. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, as set forth at 48 FR 2316, remain unchanged.

List of Subjects in 16 CFR Part 13

Advertising, Drugs, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

BEFORE FEDERAL TRADE COMMISSION

Commissioners: Daniel Oliver, Chairman,
 Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

[Docket No. 9149]

**Order Reopening the Proceeding and
 Modifying Cease and Desist Order**

In the Matter of Ogilvy & Mather International, Inc., a corporation.

On February 5, 1981, the Commission issued its complaint in this proceeding alleging that Thompson Medical Co., Inc. ("Thompson"), and its advertising agency, Ogilvy & Mather International, Inc. ("Ogilvy"), had made false and deceptive representations in advertising materials for Thompson's over-the-counter topically applied analgesic "Aspercreme" in violation of section 5 of the F.T.C. Act, 15 U.S.C. 45 ("section 5"). On October 4, 1982, the Commission accepted from Ogilvy an "Agreement Containing Consent Order to Cease and Desist" for public comment and on January 4, 1983, issued the negotiated consent order. The litigation against Thompson continued.

Paragraph 8 of the Ogilvy consent agreement specified that:

8. No part or provision of this Order shall become binding upon respondent until the effective date of a final order to cease and desist against Thompson Medical Company, Inc. or its successors or assigns. If a final order against Thompson Medical Company, Inc. in this proceeding contains a provision different from the provision that correspond[s] to the provision in Part I(A) of this Order or contains a definition of "competent and reliable scientific or medical evidence" that differs from Part II of this Order, then this Order shall be reopened for the sole purpose of conforming said provision or said definition in this Order with the corresponding provision or definition in the Thompson Medical Company, Inc. order. In the event that the Complaint in this matter against Thompson Medical Company, Inc. is dismissed in whole, then the Commission, upon the application of respondent, shall set aside this Order.

On November 24, 1984, the Commission issued a cease-and-desist order against Thompson. 104 F.T.C. 648. Thompson petitioned for review of the order, which was affirmed by the Court of Appeals. 791 F.2d 189 (DC Cir. 1986). Thompson then petitioned for *certiorari*, and the Commission's order became final in early 1987 after the Supreme Court denied that petition. 107 S.Ct. 1289 (1987). Consistent with Paragraph 8 of the Ogilvy consent agreement, the Commission's order against Ogilvy became effective at the same time as the Thompson order.

On November 17, 1987, Ogilvy filed a request that the Commission reopen this proceeding and modify the 1983 consent order against Ogilvy. The request cites Paragraph 8 of the "Agreement Containing Consent Order to Cease and

Desist" ("consent agreement") as justification for certain modifications to Parts IA and II of the order and also asserts that changed conditions of fact and law and the public interest justify modification of other parts of the order.

The Commission's order against Ogilvy comprises seven parts. Part I prohibits respondent from misrepresenting the ingredients of any drug product, from misrepresenting that any drug product is new or involves any new principle, and from misrepresenting any test or study of any drug product or the effectiveness of any drug product. Part II of the order prohibits certain effectiveness and side effect claims for any topically applied drug product unless the claims are substantiated. Parts III, IV, V and VII of the order impose record-keeping requirements and mandate notification of the Commission concerning corporate changes and distribution of copies of the order and require submission of compliance reports. Part VI of the order states that the order does not apply to three named corporate subsidiaries of Ogilvy.

Ogilvy first seeks modifications of Parts IA and II of the order, which it believes should be granted on the basis of Paragraph 8 of its consent agreement, quoted above. The modification to Part IA would replace the current language banning use of the tradename "Aspercreme" for a product that does not contain therapeutically significant quantities of aspirin with language permitting use of that tradename for such a product, provided the advertising and labeling using the tradename "clearly and prominently disclose that the product does not contain aspirin." The modified language would include explicit directions concerning the permissible disclosures for television, radio and print advertising and for labels. The requested modifications to Part IA of the order will conform a portion of the order against Ogilvy covered by Paragraph 8 of Ogilvy's consent agreement to the parallel *Thompson* language, and the Commission agrees that the changes are justified.

Ogilvy also requests that the Commission modify to reflect the *Thompson* decree the language in Part II of the order requiring that clinical studies conform to the requirements set forth in 21 CFR Parts 314 and 330. Ogilvy's proposed order would require clinical studies to conform to "acceptable designs and protocols." This change too will conform a portion of the *Ogilvy* order covered by Paragraph 8 of the consent agreement to the parallel provision of the *Thompson*

order, and the Commission agrees that it is justified.

Ogilvy further requests that Part VI of the order be modified. Part VI of the present order excepts from the scope of the decree "three subsidiary corporations wholly owned by respondent unless a product otherwise covered by the order is assigned or transferred from respondent to one" of them. Ogilvy seeks to except two additional subsidiaries from the scope of the order. One, Rolf Warner Rosenthal, Inc., was acquired after the order was issued and specializes in advertising of prescription drugs to health care professionals. The other, Euramerica, Inc., did not engage in advertising at the time the order was issued, but now performs some advertising activities. Ogilvy asserts that both subsidiaries are "independent" and that the "intent of Part VI is to exempt all independent Ogilvy subsidiaries." Request for Modification at 9.

Ogilvy asserts that its acquisition of Rolf Warner Rosenthal, Inc., and its conversion of Euramerica, Inc., to an advertising subsidiary constitute changed facts that under section 5 require the Commission to reopen and modify the order. Nothing in the consent agreement and order suggests that the Commission's intent to exempt "independent" subsidiaries. Ogilvy has not suggested any other reason to construe the order this way, nor does it suggest what an "independent" subsidiary is under the terms of the order. Nothing in the consent agreement or the order compels the Commission to exempt additional subsidiaries of Ogilvy simply on a showing that they exist. The acquisition of Rolf Warner Rosenthal, Inc., and the conversion of Euramerica are not, therefore, changes of fact that require granting Ogilvy's request for modification.

Absent a showing of changed fact or law, the Commission may modify its orders if it concludes that to do so would be in the public interest. To meet its burden in this respect, Ogilvy must show that if the two additional subsidiaries are not exempted from the order, it will sustain competitive harm that is greater than or different from the harm that it reasonably might have expected at the time it agreed to the consent order. See, e.g., *Damon Corp.*, 101 F.T.C. 689 (1983) (show cause order). Ogilvy has not carried this burden. Indeed, it has shown only that whatever harm the two new subsidiaries will sustain is the same as that currently being suffered by the company itself. According to Ogilvy, that alleged harm stems principally from the fact that the

Ogilvy order is less stringent than certain orders in subsequent and unrelated Commission cases against competing advertising agencies.

Ogilvy submitted an affidavit from its Chairman stating that current clients have "expressed concern over the breadth of Ogilvy's order" (Phillips Aff. ¶ 8) and, specifically, that "the breadth of the order will chill Ogilvy's creative efforts * * * as Ogilvy seeks to avoid even the possibility of a civil penalty proceeding." Phillips Aff. ¶ 9. The company also has stated that the harm that would be suffered by the two new subsidiaries if the Commission refused to extend the current exemption would be the same as that being sustained by Ogilvy itself.

The Commission concludes that Ogilvy has provided no reason to treat the two subsidiaries differently from the company itself. Nor has Ogilvy shown that such harm as it has alleged is different from, or more severe than, it reasonably might have anticipated at the time the order issued. We therefore decline to grant the modification expanding the subsidiary exemption.

Ogilvy also seeks modification of several other portions of its order to conform it to the *Thompson* decree. These modifications are not covered by Paragraph 8 of the consent agreement because they do not appear in the parts of the order to which that paragraph is expressly directed. Ogilvy argues that these modifications are justified based on the Commission's action in *Benton & Bowles, Inc.*, 82 F.T.C. 1437 (1973), 102 F.T.C. 1837 (1983). In that case, the Commission issued similar complaints against an advertiser, Sterling Drug Co., and Benton & Bowles, one of its advertising agencies. Benton & Bowles agreed to a consent order, but Sterling continued to litigate and ultimately prevailed with respect to some of the allegations. The Commission dismissed those portions of the *Sterling* complaint and then vacated the *Benton & Bowles* consent order because it had derived from the portions of the *Benton & Bowles* complaint that were the same as the portions dismissed in *Sterling*.

This part of the company's request for modification would effect the following changes in the order:

Part IC: Deletion of bans on certain claims concerning efficacy based on the newness of drug or newness of mechanical principles, leaving in effect ban on claims concerning efficacy based on new scientific principles, adding the limiting description "over-the-counter" to modify "drug" and revising the existing geographic limitation to conform to the *Thompson* language: i.e., "available for

purchase in the United States" rather than "nationally available for purchase;"

Parts IIC and D: Deletion of bans on certain claims concerning side effects;

Part IF: Deletion of ban on claims made without substantiation concerning the mode of action by which a drug treats a condition;

Parts IIA and B: Deletion of coverage in provision banning deceptive effectiveness claims of claims relating to a drug's ability to treat or relieve "any other disease or condition" in addition to "symptoms of any musculoskeletal disorder;"

Parts IB and D: Deletion of redundant prohibitions concerning misrepresentations as to the presence of an ingredient and substitution of the combined provision in Part ID of the *Thompson* order; and

Part VII: Substituting the *Thompson* requirement for filing compliance reports within 60 days of service "and at such other times as the Commission may require" for the present requirement that they be filed within 60 days after the order becomes final and "annually thereafter for three years."

As in the Commission's decision vacating the *Benton & Bowles* order, the dismissal of certain allegations in the *Thompson* complaint is a change of law that requires modifying those parts of the order that relate to the complaint allegations that were dismissed. The Commission agrees, therefore, that the changes described above relating to Parts IC and IIC and D are appropriate.

The remaining modifications described above do not relate to complaint allegations that were dismissed, but rather, to allegations that resulted in less rigorous order provisions in the *Thompson* decree than those agreed to by Ogilvy. Although these modifications do not stem from dismissed complaint allegations, Ogilvy appears to argue that *Benton & Bowles* is controlling precedent. It also argues that "as a matter of fundamental fairness Ogilvy should not be punished more severely than the advertiser." Request for Modification at 20. We do not adopt either of these proffered justifications for the requested changes.

The Commission's action in *Benton & Bowles* does not compel us to conform the orders of advertising agencies and their advertisers except in the narrow circumstances in which the complaint allegations against the advertiser were replicated in the complaint against the agency, where the allegations in the advertiser's complaint were dismissed, and where the record showed no basis for imposing disparate relief on the two parties. We therefore decline to grant these modifications on the basis of that decision.

We also do not subscribe to the notion that "fundamental fairness" necessarily compels the Commission, as a general matter, to conform its orders against advertisers and their advertising

agencies. Each respondent stands on its own, and the Commission may decide that it is appropriate to impose more stringent order provisions for either the advertiser or its agency. The only restriction is that the relief against any party must be reasonably related to the unlawful conduct found. *Jacob Siegel Co. v. FTC*, 327 U.S. 808, 611-13 (1946); see also *FTC v. National Lead Co.*, 352 U.S. 419, 428-31 (1957); *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952).

Paragraph 8 of Ogilvy's consent agreement specifies two portions of its consent order that were to be modified to conform to any more lenient language that subsequently might be made applicable to *Thompson*. The company has not shown why, at this time, the Commission should ignore the expressly limited language in Paragraph 8 and modify other provisions in the order absent a demonstration that the modifications are justified on grounds of changed fact or law or the public interest. As explained elsewhere in this order, the Commission has concluded that Ogilvy has not shown that the current order is causing it any harm that is different from or more severe than it reasonably could have anticipated when it signed the consent agreement. Therefore, we have decided to deny the company's request for these changes.

Finally, Ogilvy requests modification of the preamble to Part I of the order—language not covered by Paragraph 8 of the consent agreement—to limit the scope of its coverage even more narrowly than the scope of the order against *Thompson*. The *Ogilvy* order applies to all "drugs." The *Thompson* order applies to all "OTC drugs." Ogilvy seeks to have this language modified to cover only "OTC topically applied analgesic drugs." It argues that this request is warranted because the coverage of the orders against two of the three advertising agencies in the Commission's recent "analgesics" cases¹ and the coverage of the order against *Sterling Drug*, one of the advertisers, were limited to "internal analgesic drugs."²

¹ *American Home Products Corp.*, 98 F.T.C. 136 (1981); *Bristol-Myers Co.*, 102 F.T.C. 21 (1983); *Sterling Drug, Inc.*, 102 F.T.C. 395 (1983).

² Although the order against *Sterling* is limited to "internal analgesic drugs," the order against its advertising agency, *Dancer-Fitzgerald-Sample* ("Dancer"), contains the same "all OTC drug" coverage as the order in *Thompson*. 96 F.T.C. 1 (1980). The Commission dismissed the Administrative Law Judge's order against a second advertising agency in *Sterling Drug*. 102 F.T.C. at 791.

The Commission's decision to limit the orders in the "analgesics" cases relied on by Ogilvy is not a change of fact or law that would require modification of the scope of the *Ogilvy* order. The order against *American Home Products Corp.* and its advertising agency, C.T. Clyne, which covered a more narrow range of products, was issued in September, 1981, well before the *Ogilvy* consent order. The mere fact that the Commission issues different orders in cases against different companies at different times does not justify conforming earlier orders to those issued later. The Commission decides each matter on its own merits and structures the relief mandated to fit the circumstances.

The Commission determines the product coverage in a particular order based on a number of considerations related to the facts of each specific case such as the extent of the respondent's unlawful conduct, whether the respondent knew or should have known that its conduct was improper or unlawful and the perceived need for fencing-in relief. Here, Ogilvy consented to its order, including the present product coverage, at a time when it should have known that the product coverage in that order was broader than that contained in *American Home Products*. Some months after issuance of Ogilvy's consent order, the Commission issued its orders against *Bristol-Myers*, *Sterling Drug* and certain of their advertising agencies.

The scope of product coverage is always an important question in Commission orders that prohibit deceptive advertising. The fact that the Commission chose to impose broader orders on some and more narrow orders on others indicates that the Commission decided it was appropriate to treat the companies differently. Ogilvy has presented nothing to suggest that we should go behind that determination.

The mere fact that several of those orders, like the order against *American Home Products* and C.T. Clyne, included more limited product coverage than that in the *Ogilvy* and *Thompson* decrees is not a change of law or fact sufficient under section 5 to require reopening of Ogilvy's consent and conforming it to the more favorable "analgesics" orders. This is particularly true in light of the different product coverage provisions in the "analgesics" cases themselves. As already noted, the product coverage in the order against *Dancer* in the *Sterling Drug* case is the same as that in *Thompson*, although the orders against *Sterling Drug* itself, and *Ted Bates* and

Young & Rubicam in *Bristol-Myers*, for example, are not. See note 2, *supra*.

Ogilvy also has submitted the affidavit of its Chairman in support of this portion of the company's request for modification. That affidavit states that "[a]s a result of its much broader order, Ogilvy's ability to compete against those agencies has been threatened." Aff. at ¶ 7. It also states that "[a] number of Ogilvy's clients have expressed concern over the breadth of Ogilvy's order" (*Id.* at ¶ 8), and that its clients "are concerned that the breadth of Ogilvy's order will chill Ogilvy's creative efforts with respect to all drug products as Ogilvy seeks to avoid even the possibility of a civil penalty." *Id.* at ¶ 9. These statements are conclusory and self-serving. They do not demonstrate that the current order has imposed on Ogilvy significant harm that could not reasonably have been anticipated at the time the company agreed to its terms, and they offer no information relating to actual, as opposed to speculative, competitive injury. Such information would have had a bearing on the possible public interest in granting the modification.

Under the FTC Act and the Commission's rules, a Commission order need not be altered unless the respondent demonstrates a change of law or fact requiring the modification or the Commission decides that the public interest warrants the changes sought. Ogilvy has failed to carry its burden in this respect, and the Commission, therefore, declines to grant this portion of Ogilvy's request. Similarly, we decline to grant Ogilvy's request that the product scope of Ogilvy's order be modified "at a minimum" to read "OTC drugs" as to Part I and "OTC topical analgesic drugs" as to Part II.

For the reasons above, the Commission has decided that some of the modifications proposed by Ogilvy are appropriate. Accordingly,

It is ordered that this proceeding be, and it hereby is, reopened and that the order therein against Ogilvy & Mather International, Inc., be modified to read as follows:

Order

Part I

It is ordered that respondent Ogilvy & Mather International, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, offering for sale, sale or distribution of any over-the-counter "drug," as that term is defined

in the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Employing the brand name "Aspercreme" for any such product or otherwise representing, directly or by implication, that an active ingredient of any such product is aspirin, unless such product contains aspirin in therapeutically significant quantities; provided, however, that the brand name "Aspercreme" may be used for such product if its advertising and labeling clearly and prominently disclose that the product does not contain aspirin.

(1) In television advertisements, an explicit and simple aspirin disclaimer statement (such as "ASPIRIN FREE") shall be superimposed on the television screen simultaneously with a vocal aspirin disclaimer statement (such as "Aspercreme does not contain aspirin") at the end of each advertisement;

(2) In radio advertisements, an explicit aspirin disclaimer statement (such as "Aspercreme does not contain aspirin") shall be made at the end of each advertisement;

(3) In print advertisements, an explicit aspirin disclaimer statement (such as "ASPERCREME DOES NOT CONTAIN ASPIRIN") shall be displayed prominently and conspicuously in relation to each such advertisement as a whole;

(4) In labeling, an explicit aspirin disclaimer statement (such as "DOES NOT CONTAIN ASPIRIN") shall be prominently and conspicuously printed in the front package panel (or in the front of the container if no package is used).

B. Representing, directly or by implication, that any such drug involves a new scientific principle, when such drug or one involving such principle has been available for purchase as an over-the-counter drug in the United States for more than one year.

Part II

It is further ordered, that respondent Ogilvy & Mather International, Inc., its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any "drug," as the term is defined in the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

A. Employing any trade name for any such drug which represents, directly or

by implication, that such drug contains an active ingredient which it in fact does not.

B. Representing, directly or by implication, that any such drug has an ingredient when in fact it does not have that ingredient.

C. Misrepresenting the contents, validity, results, conclusions or interpretations of any test or study.

D. Representing, directly or by implication, the mode of action by which any such drug treats, mitigates, or cures any symptom, disease, or condition unless respondent possesses and relies upon a reasonable basis substantiating the representation.

Part III

It is further ordered, that respondent Ogilvy & Mather International, Inc., its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any topically applied drug, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from:

A. Representing, directly or by implication, that any such topically applied drug is effective for the treatment or relief of the symptoms of any musculoskeletal disorder (such as arthritis, tendonitis, bursitis, or rheumatic disorders), or any other disease or condition;

B. Representing, directly or by implication, that any such topically applied drug is as fast or faster, or is as effective or more effective, than aspirin in the treatment or relief of the symptoms of any musculoskeletal disorder (such as arthritis, tendonitis, bursitis, or rheumatic disorder), or any other disease or condition;

unless at the time of the dissemination of any such representation respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific or medical evidence substantiating that representation. For the purposes of this Order, competent and reliable scientific or medical evidence shall include at least two well-controlled, double blinded clinical studies which conform to acceptable designs and protocols and are conducted by different persons, independently of each other. Such persons shall be qualified by training and experience to conduct such studies. *Provided, however,* with respect to any representation covered by this Part, if the Food & Drug Administration promulgates any final standard which

establishes conditions under which such product is safe and effective, then in lieu of the above, respondent may possess and rely upon scientific evidence which fully conforms to such final standards as a reasonable basis for said representation. *Provided, further,* however, where the evidence relied upon by respondent was not directly or indirectly conducted or controlled by respondent, it shall be an affirmative defense to an alleged violation of this Part for respondent to prove that it reasonably relied on the expert judgment of its client or of an independent third party in concluding that a reasonable basis exists which meets the requirements of this Part. Such expert judgment shall be in writing signed by a person qualified by education or experience to render the opinion. The written opinion shall describe the contents of the evidence upon which the opinion is based and shall set forth the qualifications of the person to render the opinion.

Part IV

It is further ordered that respondent Ogilvy & Mather International Inc., its successors and assigns, and its officers, representatives, agents and employees, for a period of three years after respondent last disseminates the advertisements for products covered by this Order, shall retain all test results, data, and other documents or information on which it relied for its representations or any documentation which contradicts, qualifies or calls into serious question any claim included in such advertisements which were in its possession during either their creation or dissemination. Such records may be inspected by the staff of the Commission upon reasonable notice.

Part V

It is further ordered that respondent notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate Respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the Order.

Part VI

It is further ordered that respondent shall distribute a copy of this Order to each of its operating divisions, and to each of its officers who are engaged in the preparation and placement of advertisements for products covered by this order

Part VII

It is further ordered that the provisions of this Order shall not apply to Scali, McCabe, Sloves, Inc.; Cole & Weber, Inc.; and Rogers, Weiss/Cole & Weber Advertising, three subsidiary corporations wholly owned by respondent, unless a product otherwise covered by this Order is assigned or transferred from respondent to one of those corporations. However, respondent shall distribute a copy of this Order to the officers of the aforementioned corporations.

Part VIII

It is further ordered that the respondent shall, within sixty (60) days after this Order becomes final and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by a responsible officer for respondent, setting forth in detail the manner and form in which it has complied with this Order.

By the Commission.
Benjamin I. Berman,
Acting Secretary.

*Statement of Chairman Daniel Oliver
Concurring in Part and Dissenting in
Part in the Matter of Ogilvy & Mather
International, Inc., D. 9149 Petition to
Reopen and Modify Consent Order*

I concur in the Commission's decision to modify the Ogilvy order in accordance with Paragraph 8 of the consent agreement. I also concur in the decision to delete the portions of the order that were derived from complaint allegations later dismissed in the Thompson proceeding. I would go further, however, and grant some of Ogilvy's order requests.

Before turning to those portions of the Commission's order from which I dissent, I offer a few comments on Ogilvy's request to narrow the product coverage of Part I of the order to "any OTC topically applied analgesic drug." I find this to be a closer question than the other Commissioners find it. Ogilvy contends that its conduct was no worse than that of the ad agencies involved in the *American Home Products* and *Bristol-Myers* cases, and that the product coverage of its order should therefore be no broader than the product coverage of the order against those agencies (i.e., coverage should be limited to products of the same pharmacological class and mode of application).

I agree, and Ogilvy does not dispute, that a broader order is appropriate if Ogilvy was more culpable than the other ad agencies. I have reviewed the documents upon which the Commission

relied in concluding that Thompson Medical Company, Ogilvy's client, intended to make a false "contains aspirin" claim for Aspercreme. See 104 F.T.C. at 838. In my view, Ogilvy's contention that there is a less sinister interpretation of the documents has some merit—enough, at least, to raise a question whether Ogilvy really acted more egregiously than its competitors.

Nevertheless, I agree with the decision not to grant Ogilvy's request. Since the issue of Ogilvy's culpability was not litigated, I cannot be certain whether Ogilvy's interpretation of the documents would have been refuted or what other evidence the parties would have presented. In addition, my review of the documents leaves me uneasy about the Commission's ability to make such a difficult factual determination on the basis of the information normally before us in an order modification proceeding.¹ Under the circumstances, I conclude that Ogilvy should not be given the benefit of a litigation victory it chose not to pursue.

I dissent from the Commission's decision not to conform Ogilvy's order to the Thompson decree except to the extent expressly required by Paragraph 8 of the consent agreement. I would allow the other changes requested by Ogilvy to conform its order to Thompson's. Ogilvy argues that denying its request for other modifications will discourage settlements since ad agencies will perceive that they can obtain a less restrictive order by litigating. I am not persuaded by this argument.² I am persuaded, however, that there is no basis in the record for treating Ogilvy more harshly than Thompson. The two respondents were named in a single complaint on the basis of a single set of facts. I fail to see how the public interest is served by maintaining tighter restrictions on one respondent than the other absent some factual distinction justifying disparate treatment.

I also dissent from the decision not to exempt the two additional advertising subsidiaries from the Ogilvy order.

¹ The best course of action in this case might have been to reopen the proceeding for an evidentiary hearing to compare the conduct of Ogilvy with that of its competitors.

² Although in the instance the litigated order turned out to be less restrictive than the consent order, that fact became apparent only in hindsight. At the point Ogilvy was considering whether to sign the consent order, Ogilvy did not know whether the litigated order would be more restrictive or less restrictive than the consent order. Future respondents will be faced with the same uncertainty, and thus will have just as much incentive as ever to settle the Commission's charges.

Ogilvy argues, I believe correctly, that it was understood that subsidiaries would be exempted if it were shown on a case-by-case basis that the subsidiary, by virtue of its management agreement with Ogilvy, would operate independently of Ogilvy. Given this understanding, it is unreasonable to expect Ogilvy to have felt the need to seek more explicit language in the order.³ Clearly, memorializing the understanding would have been the better course, and I would expect such understandings to be committed to writing in future orders. But is this instance, I do not think it is appropriate for the Commission to ignore the intent that guided the negotiation of the order.

The factual determination of whether the new subsidiaries qualify for exemption is a simple one. In my view, Ogilvy has presented sufficient evidence to establish that Rolf Werner Rosenthal and Euramerica, Inc. operate independently of Ogilvy. If these corporations had been advertising subsidiaries of Ogilvy at the time the order was signed, Ogilvy likely would have sought, and the Commission likely would have agreed, to treat them the same as the three subsidiaries specifically exempted in Part VI of the order. The acquisition of RWR and the conversion of Euramerica to advertising after the order was signed are changes of fact that, in my view, justify modification of the order.⁴ Although the emergence of additional subsidiaries was foreseeable at the time the order was signed, Ogilvy, as noted above, had reason to believe that future subsidiaries would be considered for exemption.

[FR Doc. 88-18699 Filed 8-17-88; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 300, 301 and 303

Reporting and Recordkeeping Requirements for Wool Products, Fur Products and Textile Fiber Products

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission issues amendments to reduce the burden of complying with the

labeling requirements of the Rules and Regulations Under the Wool Products Labeling Act of 1939, the Rules and Regulations Under the Fur Products Labeling Act and the Rules and Regulations Under the Textile Fiber Products Identification Act. Under the amendments, the recordkeeping provisions in each of the three regulations are simplified and streamlined, and the Textile Act and Wool Act regulations are clarified to ensure that affected industry members understand that required disclosures may be combined on a single label.

EFFECTIVE DATE: The amendments to these three regulations take effect on September 19, 1988.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 328-3035.

SUPPLEMENTARY INFORMATION:

Background

The Wool Products Labeling Act of 1939, 15 U.S.C. 68(d), requires that all wool products bear a label showing the percentage of wool, recycled wool and non-wool fibers contained in the product and the name of the manufacturer or the distributor. The Textile Fiber Products Identification Act, 15 U.S.C. 70(e), requires that each household textile product bear a label showing the percentage of each fiber contained in the product, using the appropriate generic name for the fiber, and the identity of the manufacturer or distributor. Advertisements for textile products must also show the required information if any mention of fiber content is made. Both acts require disclosure of country of origin. The Fur Products Labeling Act, 15 U.S.C. 69(f), requires the labeling, invoicing and advertising of furs and fur products to show the true name of the animal that produced the fur, whether the fur is used, dyed or imported, and the identity of the manufacturer or distributor. The three acts, as well as the Commission's rules implementing them, apply to manufacturers, distributors and retailers of textile, wool and fur products.

Paperwork Reduction Act of 1980

The Commission has estimated that the labeling and recordkeeping requirements contained in the rules implementing the Textile Fiber Products Identification Act, the Wool Products Labeling Act of 1939, and the Fur Products Labeling Act entail, in the aggregate, more than 20 million hours of paperwork burden, which is approximately fifty percent of the

paperwork burden for all the rules issued by the Commission. As called for by the Paperwork Reduction Act, 44 U.S.C. 3501-3520 ("PRA"), the Commission has reviewed its activities that come within the definitions of "information collection" contained in 5 CFR 1320.7, the rules implementing the PRA. As a result, the Commission has modified several rules to accomplish their statutory or regulatory objectives at a reduced paperwork burden, which is the objective of the amendments set forth in this Notice.

The current burden estimates for the recordkeeping and labeling requirements of the three rules are based on the Commission's original submissions of the Office of Management and Budget ("OMB"), which were made in 1983 in accordance with the PRA provisions and the rules implementing them. Based on research and informal contacts with industry representatives, the Commission increased the estimates for the Textile and Wool Rules by slightly more than 16% cumulatively to reflect increases in the markets affected by the rules. The estimates for the Fur Rules were not adjusted because, according to industry representatives and market statistics, the fur market has not increased substantially since 1983.

The adjusted estimates for the combined recordkeeping and labeling burden are as follows:

Regulation	Adjusted burden hours
Textile Rules.....	¹ 18,600,000
Wool Rules.....	² 2,960,000
Fur Rules.....	³ 138,000

¹ Recordkeeping burden=1,500,000 hours; Labeling burden=17,100,000 hours.

² Recordkeeping burden=215,000 hours; Labeling burden=2,745,000 hours.

³ Recordkeeping burden=38,000 hours; Labeling burden=100,000 hours.

Because the amendments would modify these existing information collection requirements, the Office of the General Counsel submitted Standard Form 63 and Supporting Statement to OMB for review under the Paperwork Reduction Act and the rules implementing it. On April 25, 1988, OMB approved the Commission's request for clearance of the proposed changes and re-issued the following control numbers for the Commission's use through April 25, 1991: 3084-0053 (Wool Rules), 3084-0064 (Fur Rules) and 3084-0052 (Textile Rules).

³ Moreover, here there was a conscious decision not to include a generalized exemption in order to avoid creating a loophole by which Ogilvy could circumvent the order.

⁴ Granting this modification would not enable Ogilvy to circumvent the order by steering clients to RWR and Euramerica. Part VI of the order provides that the exemption does not apply if a product otherwise covered by the order is (1) transferred by Ogilvy to an exempted subsidiary, or (2) assigned by Ogilvy to an exempted subsidiary.

The Proposal To Review the Information Collection Requirements

On February 29, 1988,⁴ the Commission published a Federal Register Notice that reviewed the information collection requirements contained in the above-mentioned rules. The Notice included proposed amendments to simplify and streamline the recordkeeping provisions in each of the three regulations, and to ensure that industry members affected by the Textile and Wool regulations understand that the required disclosures may be combined on any label on the garment, including the Commission's care label, as long as the location and conspicuousness requirements of the regulations are met. The Notice also sought comment on other ways to reduce the paperwork burden of the members of these industries. Four comments, which were generally favorable and supportive, were received in response to this Notice.

Comments on the Proposed Amendments

The February 29 Notice solicited comment on both the substantive and information collection aspects of the proposed changes and directed the public to send substantive comments to the Commission and paperwork comments to OMB. The amendments were intended to reduce the paperwork burden of the regulations in two ways: (1) By simplifying recordkeeping requirements; and (2) by eliminating unnecessary labels. The comments received by the Commission primarily addressed the substantive aspects of the proposals without detailed comment on the paperwork aspects.

Each proposal, the comments received that related to it, and the resulting recommended amendment are discussed separately below.⁵

1. Reducing Recordkeeping Requirements

The review of these rules for ways to reduce paperwork burden focused primarily on recordkeeping because the content of the required information

disclosures is tightly tied to the requirements of the statutes and cannot be altered by the Commission. For example, the labels required by the Wool Act and Textile Act must show fiber content, name (or registered identification number) of the manufacturer or distributor, and country of origin.⁶ The Commission's review indicates that each of the recordkeeping requirements contains a very specific list of categories of records that must be retained, which requires more (or more detailed) information than is necessary to demonstrate compliance with the statutes and rules. The Notices announcing the original adoption of these requirements, which were published during the period spanning the 1940's and 1950's, do not give reasons for this approach, but detailed "command and control" regulations were generally thought to be appropriate during that period. The amendments delete unnecessary specificity in the rules' enumeration of required records, and substitute a clearer performance requirements.

The record indicates that, under this simplification, records kept in the normal course of business will be sufficient to demonstrate compliance.⁷ Three comments, NAHM,⁸ NKMA,⁹ and NTA,¹⁰ noted that the result of the amendments would be that "a substantial amount of otherwise unnecessary recordkeeping will be eliminated for domestic manufacturers."¹⁰ When compliance can be demonstrated by records kept in the normal course of business, the recordkeeping burden estimates are reduced. The reduction occurs because § 1320.7(b)(1) of the regulations implementing the Paperwork Reduction Act¹¹ excludes from burden estimates

⁴ Two comments touched on industry support for the statutory requirements underlying the labeling and recordkeeping provisions of the Rules. NAHM noted that compliance is "a priority concern" in the hosiery industry (206-23-1). NTA, whose members are concerned primarily with the Wool Act, lent its support to the proposed amendments as long as "neither would substantively change the requirements for manufacturers, importers and retailers of wool products to conspicuously and accurately label the fiber content of their products and keep appropriate documentation thereof." (206-23-4).

⁷ The Commission's staff has informally received information from industry representatives, in addition to the comments formally submitted on the record, to the effect that apparel manufacturers often keep "fabric libraries" in the normal course of business that contain samples of fabrics used and information relating to them, such as fiber content, source, country of origin, price and other information.

⁸ 206-23-1.

⁹ 206-23-3.

¹⁰ 206-23-4.

¹¹ 5 CFR 1320.7(b)(1) (1988).

the time and effort "that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records)." Under the amendments announced today, industry members must keep records that show that the information required by the statutes and regulations has accurately been provided, and that permit tracing finished covered products back to the raw material supplier. This simplification of the recordkeeping does not affect our ability to bring enforcement actions.¹²

2. Eliminating Unnecessary Labels

The second amendment concerns the labels on garments regulated by the Textile and Wool Labeling Acts. The Textile and Wool Acts require certain disclosures and the rules for these Acts implement statutory specifications for placement or conspicuousness of the disclosures (e.g., Rule 15, Textile Rules, Rule 5, Wool Rules). For example, required, information must, by statute, be disclosed on a label located in the center of the neck of garments with necks. In addition to labels containing Textile and Wool Act information, garments must also have care labels,¹³ and may contain other labels, such as brand name labels and labels describing product features.

The Rules do not prohibit combining required information on a single label (for example, Textile Act information with Care Labeling Rule information). However, while allowing additional information on the label, the Rules were written to ensure that required information would not be obscured. In achieving that end, the language of the Rules may unintentionally deter businesses from efficiently combining information on one label. For example, Textile Rule 16(c) states that if non-required information (i.e. information not required by the Textile Act) " * * * is placed on the label or elsewhere on the product, such non-required information shall be set forth separate and apart from the required information and shall not interfere with, minimize, detract from, or conflict with such required information * * *." Consequently, the original burden for the Rules was calculated on the basis that a separate label would be used to

¹² NTA contended that the recordkeeping amendments will not diminish the Wool Act's consumer protection effectiveness, " * * * nor will the amendments apparently lessen the Federal Trade Commission's enforcement ability." (206-23-4).

¹³ Care Labeling of Textile Wearing Apparel and Certain Piece Goods, 16 CFR Part 423 (1988).

⁴ 53 FR 5968.

⁵ The comments are each filed on the public record on both of two rulemaking dockets—Docket No. 204, pertaining to the Rules and Regulations Under both the Wool Products Labeling Act of 1939 and the Fur Products Labeling Act, and Docket No. 206, pertaining to the Rules and Regulations Under the Textile Fiber Products Identification Act. They are filed chronologically in a separate category pertaining to this rulemaking under the Paperwork Reduction Act—204-20-1 through 4 for the Wool and the Fur Rules, and 206-23-1 through 4 for the Textile Rules. For simplicity's sake, this discussion refers to them as they are listed under the Textile Rules, as, for example, "AAMA, 206-23-2".

comply with the requirements of each of the labeling acts.

The amendments are to Rule 10 of the Wool Rules and Rule 16 of the Textile Rules (18 CFR 300.10 and 303.16) to clarify that combining information required by the Rules with other information on a single label is permitted so long as the location and conspicuousness requirements of the required information are satisfied and the combination of information is not misleading.¹⁴ For example, the name, fiber content and country of origin information required by the Wool and Textile Acts could be combined with Care Labeling information on a single label placed in the neck of a jacket or shirt or in a conspicuous location on a skirt or a pair of trousers.

The only specific comment on whether, and to what extent, industry members are presently combining information on labels came from NKMA, who noted that they believed a large number of their members are combining information on labels as permitted by the current rules. However, NKMA noted that the added flexibility resulting from the clarification of the labeling requirements could benefit their members "in certain instances."¹⁵ The other commenters generally believed that the package of amendments would reduce their paperwork burden. Further, other industry members, not just those in NKMA, may take advantage of label combining as a result of the clarification. Consequently, the Commission is adopting the clarifying amendments.

There is no similar amendment to the Fur Rules. Because the Care Labeling Rule does not apply to fur products, significant burden reduction through combining labels (i.e., required labels with brand labels) may be less likely. The February 29 Notice included a question on whether an amendment to the Fur Rules clarifying that required information could be combined onto other labels would reduce the labeling burden. Because the Fur Rules (unlike the Textile and Wool Rules) specify a minimum size (1½ inches by 2¾ inches) for the label (Rule 27) and minimum type size for the disclosures (Rule 29), the Notice also included a question on

whether replacing the label and type size specifications in Fur Rules 27 and 29 with a general conspicuousness standard would be desirable, and whether this would (and to what extent) reduce the paperwork burden. Because the Commission received no comment in response to these questions, it is making no changes to the Fur Rules in this area.

Other Issues

In addition to setting out the proposed amendments to the recordkeeping and labeling requirements of the three rules, the February 29 Notice solicited comment on the following:

First, under Rule 39 of the Fur Rules, certain fur trim products that cost twenty dollars or less to the manufacturer who incorporates them into fur products are exempted from disclosure requirements. The Notice solicited comment on whether the twenty-dollar figure should be increased to account for inflation. Since no comment was received, the Commission is not changing the twenty-dollar figure.

Second, the Commission proposed to clarify the Fur Rules by moving material relating to the detection of dyestuffs from the end of Rule 41, which concerns the maintenance of records, to the end of Rule 19, which relates to the disclosure of dyes in fur products. Since this amendment will put all the information regarding dyes in one place, and will not affect the substance of the Rules, the Commission is adopting it, even though no comments on it were received.

Reduction in Paperwork Burden Hours

In the Supporting Statement that the Commission authorized the General Counsel's Office to submit to OMB to obtain clearance for the proposed amendments, there were estimates of the amount of burden hour reductions each proposed amendment would effect, if enacted. OMB has accepted these estimates, based on the assumption that the amendments will be enacted in substantially the form in which they were proposed, and has adjusted its calculation of the Commission's Information Collection Budget accordingly. Although three comments generally stated that the amendments would be helpful¹⁶ and one stated they would probably not change the existing burden,¹⁷ no comments provided specific data on the numbers of hours that are associated with these requirements or on the number of hours of burden reduction that could result

from enactment of the proposed amendments. Consequently, the Commission is proceeding on the basis of the estimates that OMB has accepted. The rationale for the specific burden reduction calculations can be found in Section 13 of the Supporting Statement sent to OMB, which is available during business hours in the Commission's Public Reference Room at the Federal Trade Commission's main offices in Washington, DC.

The approximately 3.5 million hours worth of burden reductions by which OMB has reduced the Commission's Information Collection Budget are summarized as follows:

	Burden hour reductions
Recordkeeping:	
Textile Rules	1,350,000
Wool Rules	190,000
Fur Rules	30,000
Labeling:	
Textile Rules	1,710,000
Wool Rules	274,000

Regulatory Flexibility Act

The Notice announcing the proposed amendments did not contain a regulatory analysis under the Regulatory Flexibility Act (5 U.S.C. 603-604). This analysis was not required because the Commission believed that the amendments, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission reached this conclusion because the amendments, if enacted, will impose no additional cost on small entities and will have the same effect on all business entities within the affected industries, regardless of their size. The reduced burden, with respect to both recordkeeping and labeling practices, will potentially benefit small, medium and large entities within the textile, wool and fur industries.

The February 29 Notice, however, discussed the applicability of the Regulatory Flexibility Act to the proposed amendments and requested any information that would bear on whether the proposed amendments would have a significant economic impact on a substantial number of small entities. On the basis of the above analysis and the single comment received,¹⁸ which was to the effect that the amendments "would not appear to have" a significant economic impact on small entities, the Commission believes that the preparation of a final regulatory flexibility analysis is not warranted.

¹⁴ The revisions to the Rules are printed in the "Amendments" section of the Notice. The Rules have virtually identical requirements and provisos for conspicuousness and the arrangement of information. However, the requirements appear in different subsections of each of the Rules, not all of which are printed in the "Amendments" section. Consequently, although the requirements, as viewed in the "Amendments" section, may not seem the same, that is only because other portions of the Rules are not reprinted there.

¹⁵ 206-23-3.

¹⁶ NAHM, 206-23-1; AAMA, 206-23-2; NTA, 206-23-4.

¹⁷ NKMA, 206-23-3.

¹⁸ NKMA, 206-23-3.

In light of the above, the Commission certifies, under section 5 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic effect on a substantial number of small entities.

List of Subjects

16 CFR Part 300

Labeling, Textile, Trade practices, Wool.

16 CFR Part 301,

Fur, Labeling, Trade practices.

16 CFR Part 303

Labeling, Textile, Trade practices.

Amendments

For the reasons set forth in the preamble, Title 16, Chapters 300, 301 and 303 of the Code of Federal Regulations is amended as follows:

PART 300—RULES AND REGULATIONS UNDER THE WOOL PRODUCTS LABELING ACT OF 1939

The authority citation for Part 300 continues to read as follows:

Authority: 15 U.S.C. 68 *et seq.* and 15 U.S.C. 70 *et seq.*

The Commission is amending Part 300 of Title 16 of the Code of Federal Regulations by revising § 300.10(a) and 300.31 to read as follows:

§ 300.10 Arrangement of label information.

(a) The required information may appear on any label attached to the product, provided all the pertinent requirements of the Act and Regulations are met and so long as the combination of required information and non-required information is not misleading. All parts of the information required to be displayed in the label of the product shall be set forth in immediate conjunction with each other, and in type or lettering plainly legible and conspicuous, and all parts of the required fiber content information shall appear in type or lettering of equal size and conspicuousness; such as for example:

Distributed by:

John Q. Doe Co., Inc.,
New York, NY.

Made of
60% WOOL
40% RECYCLED WOOL

EXCLUSIVE OF ORNAMENTATION

Made in U.S.A.

Provided, however, that the required name or registered identification number may appear on the reverse side of the label if it is plainly legible,

conspicuous and accessible, and *provided further,* that the required name or registered identification number may be conspicuously set out on a separate label which is prominently and conspicuously displayed in immediate conjunction with, or in close proximity to the label containing the other required information, in accordance with the requirements of § 300.21. Where only one end of a cloth label is sewn to the product in such a manner that both sides of the label are readily accessible to the prospective purchaser, the required fiber content information may appear on the reverse side of the label if the front side of such label clearly and conspicuously shows the wording *Fiber Content on Reverse Side*. On products as to which sectional disclosure is used, an additional non-deceptive label may be used showing the complete fiber content information with percentages as to a particular section or area of the product and specifying the section or area referred to.

§ 300.31 Maintenance of records.

(a) Pursuant to the provisions of section 6 of the Act, every manufacturer of a wool product subject to the Act, irrespective of whether any guaranty has been given or received, shall maintain records showing the information required by the Act and Regulations with respect to all such wool products made by such manufacturer. Such records shall show:

(1) The fiber content of the product specified in section 4(a)(2)(A) of the Act.

(2) The maximum percentage of the total weight of the wool product of any non-fibrous loading, filling or adulterating matter as prescribed by section 4(a)(2)(B) of the Act.

(3) The name, or registered identification number issued by the Commission, of the manufacturer of the wool product or the name or registered identification number of one or more persons subject to section 3 of the Act with respect to such wool product.

(4) The name of the country where the wool product was processed or manufactured as prescribed by sections 300.25a and/or .25b.

(b) Any person substituting labels shall keep such records as will show the information on the label removed and the name or names of the person or persons from whom the wool product was received.

(c) The purpose of these records is to permit a determination that the requirements of the Act and Regulations have been met and to establish a traceable line of continuity from raw material through processing to finished

product. The records shall be preserved for at least three years.

PART 301—RULES AND REGULATIONS UNDER THE FUR PRODUCTS LABELING ACT

The authority citation for Part 301 continues to read as follows:

Authority: 15 U.S.C. 69 *et seq.*

The Commission is amending Part 301 of Title 16 of the Code of Federal Regulations by revising § 301.19(l) and 301.41 to read as follows:

§ 301.19 Pointing, dyeing, bleaching or otherwise artificially coloring.

(l) Any person subject to this section who incorrectly marks or fails to mark fur pelts as provided in paragraphs (i) and (j) of this section shall be deemed to have misbranded such products under section 4(l) of the Act. Any person subject to this section who furnishes a false or misleading affidavit under paragraph (k) of this section or fails to give the notice required by paragraph (k) of this section shall be deemed to have neglected and refused to maintain the records required by section 8(d) of the Act.

(1) In connection with paragraph (h) of this section, the following method may be used for detection of parts per million of iron and copper in hairs from fur pelts including hairs from mink pelts. Procedure for detection of parts per million of iron and copper in hairs from fur pelts including mink hairs.

(2) A recommended method for preparation of samples would be:— Carefully pluck hair samples from 10 to 15 different representative sites on the pelt or garment. This can best be accomplished by using a long nose stainless steel pliers with a tip diameter of 1/16 inch. The pliers should be inserted at the same angle as the guard hairs with the tip opened to 1/4 inch. After contact with the hide, the tip should be raised about 1/4 inch, closed tightly and pulled quickly and firmly to remove the hair.

(3) Place an accurately weighed sample of approximately .1000 grams of mink hair into a beaker with 20 ml. concentrated nitric acid. Evaporate just to dryness on a hot plate.

(4) If there is any organic matter still present, add 10 ml. of concentrated nitric acid (see paragraph 7) and again evaporate just to dryness on a hot plate. This step should be repeated until the nitric acid solution becomes clear to light green. Add 10 ml. of 1% hydrochloric acid to the dried residue in

the beaker. Warm on a hot plate to insure complete solution of the residue.

(5) A recommended analytical procedure would be atomic absorption spectrophotometry. In testing for iron, the atomic absorption instrument must have the capability of a 2 angstrom band pass at the 2483 Å line. When analyzing for iron the air-acetylene flame should be as lean as possible.

(6) A reagent blank should be carried through the entire procedure as outlined above and the final results corrected for the amounts of iron and copper found in the reagent blank.

(7) If facilities are available for handling perchloric acid, a preferred alternate to the additional nitric acid treatment would be to add 2 ml. of perchloric acid and 8 ml. of nitric acid, cover the beaker with a watch glass and allow the solutions to become clear to light green before removal of the watch glass and evaporation just to dryness.

§ 301.41 Maintenance of records.

(a) Pursuant to section 3(e) and section 8(d)(1), of the Act, each manufacturer or dealer in fur products or furs (including dressers, dyers, bleachers and processors), irrespective of whether any guaranty has been given or received, shall maintain records showing all of the required information relative to such fur products or furs in such manner as will readily identify each fur or fur product manufactured or handled. Such records shall show:

(1) That the fur product contains or is composed of natural, pointed, bleached, dyed, tip-dyed or otherwise artificially colored fur, when such is the fact;

(2) That the fur product contains used fur, when such is the fact;

(3) The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur;

(4) That the fur product is composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces, or waste fur, when such is the fact;

(5) The name of the country of origin of any imported furs used in the fur products;

(6) The name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture, import, sell, advertise, offer, transport or distribute the fur product in commerce.

(7) The item number assigned, or reassigned, to each fur or fur product as set out in § 301.40

(b) The purpose of the records is to permit a determination that the requirements of the Act and Regulations have been met and to establish a traceable line of continuity from raw

material through processing to finished product. The records shall be preserved for at least three years.

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

The authority citation for Part 303 continues to read as follows:

Authority: 15 U.S.C. 70 (et seq.)

The Commission is amending Part 303 of Title 16 of the Code of Federal Regulations by revising §§ 303.16(a) and 303.39(a) to read as follows:

§ 303.16 Arrangement and disclosure of information on labels.

(a) The information with respect to textile fiber products required to be shown and displayed upon the label shall be that which is required by the Act and Regulations. The required information may appear on any label attached to the textile fiber product, provided all the pertinent requirements of the Act and Regulations are met and so long as the combination of required information and non-required information is not misleading. The required information shall include the following:

(1) The generic names and percentages by weight of the constituent fibers present in the textile fiber product, exclusive of permissive ornamentation, in amounts of five per centum or more and any fibers disclosed in accordance with § 303.3(b) shall appear in order of predominance by weight with any percentage of fiber or fibers required to be designated as other fiber or other fibers appearing last.

(2) The name, provided for in § 303.19, or registered identification number issued by the Commission, of the manufacturer or of one or more persons marketing or handling the textile fiber product.

(3) The name of the country where such product was processed or manufactured, as provided for in § 303.33.

* * * * *

§ 303.39 Maintenance of records.

(a) Pursuant to the provisions of section 6 of the Act, every manufacturer of a textile fiber product subject to the Act, irrespective of whether any guaranty has been given or received, shall maintain records showing the information required by the Act and Regulations with respect to all such textile fiber products made by such manufacturer. Such records shall show:

(1) The generic names and percentages by weight of the constituent

fibers present in the textile fiber product, exclusive of permissive ornamentation, in amounts of five per centum or more.

(2) The name, provided for in § 303.19, or registered identification number issued by the Commission, of the manufacturer or of one or more persons marketing or handling the textile fiber product.

(3) The name of the country where such product was processed or manufactured as provided for in § 303.33.

The purpose of the records is to permit a determination that the requirements of the Act and Regulations have been met and to establish a traceable line of continuity from raw material through processing to finished product.

* * * * *

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-18698 Filed 8-17-88; 8:45 am]

BILLING CODE 6750-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revisions to Freedom of Information Act (FOIA) Regulations

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This rule redesignates the positions responsible for handling and determining initial requests and administrative appeals under the FOIA to reflect TVA organizational changes. This rule was not published in proposed form since it relates to agency organization, procedure, and practice. Since this rule is nonsubstantive, it is being made effective immediately.

EFFECTIVE DATE: August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Gilbert D. Francis, Jr., (615) 632-6000.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of information, Privacy, Sunshine Acts.

For the reasons set forth in the preamble, Title 18, Chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for Part 1301 continues to read as follows:

Authority: 48 Stat. 58, as amended; 16 U.S.C. 831-831dd, unless otherwise noted.

2. Section 1301.1 is amended by revising the first sentence of paragraph (b) introductory text, the second and third sentences of paragraph (c)(1)(i), the first sentence of paragraph (c)(1)(ii), the first and second sentences of paragraph (c)(2)(i), the third sentence of paragraph (c)(2)(ii), the second sentence of paragraph (c)(3)(i), the fourth sentence of paragraph (c)(3)(ii), and the third sentence of paragraph (e) as follows:

§ 1301.1 Records.

(b) *Requests.* Requests to inspect and copy TVA records shall be directed to the Manager, Public Affairs, Governmental and Public Affairs, Tennessee Valley Authority, Knoxville, Tennessee 37902-1499. * * *

(c) * * *

(1) * * *

(i) * * * Initial determinations shall be made by the Manager, Public Affairs or the Manager, Public Affairs' designee. If the initial determination is not to comply with the request, the notice to the person making the request shall include a statement of the reasons for the denial of the request; a notice of the right of the person making the request to appeal the denial to the Vice President, Governmental and Public Affairs, and the time limits therefor; and the name and job title of the person responsible for the initial determination.

(ii) For purposes of this paragraph, a request is deemed to be received by TVA only when it is physically delivered to Governmental and Public Affairs and meets all the requirements of paragraph (b) of this section. * * *

(2) * * *

(i) If the initial determination is to deny the request, the person making the request may appeal such action to the Vice President, Governmental and Public Affairs. Such an appeal must be taken within 30 days after the person's receipt of the initial determination and is taken by delivering a written notice of appeal to the Vice President, Governmental and Public Affairs, Tennessee Valley Authority, Knoxville, Tennessee 37902-1499. * * *

(ii) * * * Determinations of appeals under this section shall be made by the Vice President, Governmental and Public Affairs or the Vice President's designee. * * *

(3) * * *

(i) * * * Such extension may not exceed 10 working days, and a decision to make such extension shall be made by the Manager, Public Affairs or the Manager, Public Affairs' designee.

(ii) * * * A decision to make an extension under this paragraph shall be

made by the Vice President, Governmental and Public Affairs or the Vice President's designee.

* * * * *

(e) * * * A pricelist and order form for some of the most frequently asked for TVA publications and reports are contained in form TVA 3077, which may be obtained by writing the Manager, Public Affairs, Governmental and Public Affairs, Tennessee Valley Authority, Knoxville, Tennessee 37902-1499. * * *

Craven Crowell,

Vice President, Governmental and Public Affairs.

[FR Doc. 88-18686 Filed 8-17-88; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Chlortetracycline

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by American Cyanamid Co. providing for use of a chlortetracycline (CTC) Type A article in making free-choice cattle feeds. The free-choice cattle feed is used as an aid in the prevention of anaplasmosis.

EFFECTIVE DATE: August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, filed supplemental NADA 48-761 which provides for the safe and effective use of Aureomycin® Type A articles (chlortetracycline calcium complex equivalent to 10 to 100 grams per pound chlortetracycline hydrochloride) to manufacture free-choice feeds for beef and nonlactating dairy cattle such as feed blocks or salt-mineral mixes, to provide a minimum daily dose of 0.5 milligram (mg) CTC per pound of body weight for use as an aid in the prevention of anaplasmosis. The manufacture of specific free-choice formulations from Type A medicated articles must be approved under section 512(b) of the Federal Food, Drug, and Cosmetic Act (the act) and must be

based on a demonstration of drug stability and consumption which is consistent with the effective dose; manufacture of individual free-choice feed formulations must be approved under an application pursuant to section 512(m) of the act. This supplemental NADA is approved and the regulations in 21 CFR 558.128 are amended accordingly. The basis for approval is discussed in the freedom of information (FOI) summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.
Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.128 is amended by revising paragraph (a), by redesignating paragraph (c)(4) as paragraph (c)(5), and by adding new paragraph (c)(4) to read as follows:

§ 558.128 Chlortetracycline.

(a) *Approvals.* Type A medicated articles: 10 to 100 grams per pound chlortetracycline to 010042 in § 510.600(c) of this chapter; 35 grams chlortetracycline with 7.7 percent (35 grams) sulfamethazine to 010042 in § 510.600(c) of this chapter.

* * * * *

(c) * * *
(4) It is used in free-choice cattle feeds such as feed blocks or salt-mineral mixes manufactured from approve Type A articles; such feeds are given to beef

cattle and nonlactating dairy cattle to provide a daily minimum intake of 0.5 milligram of chlortetracycline per pound of body weight to aid in the prevention of anaplasmosis; the use of these Type A articles to make specific free-choice feed formulations must be approved under section 512(b) of the act and be based on a demonstration of drug stability and consumption which is consistent with the effective dose; the specific free-choice feed formulations approved in this paragraph can be manufactured under section 512(m) of the act.

Dated: August 11, 1988.

Richard A. Carnevale,
Deputy Director, Office of New Animal Drug
Evaluation, Center of Veterinary Medicine.
[FR Doc. 88-18695 Filed 8-17-88; 8:45 am]
BILLING CODE 4160-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 201

[A.I.D. Regulation 1]

Miscellaneous Amendments

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: A.I.D. is amending its rules applicable to A.I.D.-financed commodity transactions to include information on OMB approval under the Paperwork Reduction Act, to specify that the Bahamas and Taiwan are ineligible source countries under A.I.D. Geographic Code 941, to revise eligibility requirements for incidental services and for air transportation under through bills of lading, to update the definition of U.S. flag air carrier and provide the correct citation for U.S. flag air carrier availability criteria, and to update office names.

EFFECTIVE DATE: August 18, 1988.

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Kathleen J. O'Hara, Room 1600I, SA-14, Agency for International Development, Washington, DC 20523. Telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: The summary of A.I.D. Geographic Code 941 is amended to reflect the fact that Taiwan and the Bahamas are no longer eligible source countries under this code.

The \$50,000 limitation on services incidental to a commodity procurement is removed; such services are now limited to 25 percent of the total

purchase contract, regardless of actual dollar amount.

A change is being made in the transshipment provision for air transportation in § 201.13(b) to indicate that the total cost on a through bill of lading must be paid to an eligible carrier for initial international carriage on an eligible aircraft in order to be eligible for financing under the transshipment provision. A.I.D.'s current policy requires payment to an eligible carrier, but the language in Regulation 1 does not state so specifically. The requirement for initial international carriage is added to assure that the requirements of the Fly America Act are met.

Other changes being made are editorial only.

The Agency has determined that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule for purposes of Executive Order 12291 and has been submitted to OMB in accordance with the Executive Order.

The public reporting burden for this collection of information is estimated to average 30 minutes per response, except for the forms at Appendices A and D which are estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Procurement Planning, Policy and Evaluation Staff, A.I.D., Washington, DC 20523-1435, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 22 CFR Part 201

Commodity procurement, Foreign aid, Grant programs—foreign relations, Loan programs—foreign relations.

PART 201—RULES AND PROCEDURES APPLICABLE TO COMMODITY TRANSACTIONS FINANCED BY A.I.D.

1. The authority citation in Part 201 is revised to read as follows:

Authority: 22 U.S.C. 2381.

Subpart A—Definitions and Scope of This Part

2. A new § 201.03 is added to read as follows:

§ 201.03 OMB approval under the Paperwork Reduction Act.

The following information collection and recordkeeping requirements established by this Part 201 have been approved by OMB (OMB Control No. 0412-0514 expiring April 30, 1991 except where noted):

Section

201.13(b)(1)

201.13(b)(2)

201.15(c)

201.31(g)

201.32(c)

201.32(d)

201.33

201.52(a)

201.74

Appendix A (OMB No. 0412-0012, expiration 11/30/88).

Appendix D (OMB No. 0412-0004, expiration 5/31/91).

The information requested will be used to verify compliance with statutory and regulatory requirements and to assist in administration of A.I.D.-financed commodity programs. The submission of the information is required in order to receive payment for commodities or commodity-related services. The public reporting burden for this collection of information is estimated to average 30 minutes per response, except for the forms at Appendices A and D which are estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Procurement Planning, Policy and Evaluation Staff, A.I.D., Washington, DC 20523-1435, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Subpart B—Conditions Governing the Eligibility of Procurement Transactions for A.I.D. Financing

§ 201.11 [Amended]

3. In § 201.11 paragraph (b)(4), the summary of A.I.D. Geographic Code 941 is amended by inserting "Bahamas" between "Austria" and "Bahrain" and by inserting "Taiwan (Republic of China)" between "Switzerland" and "United Arab Emirates" in the list of countries not included in Code 941.

4. Section 201.12 is revised to read as follows:

§ 201.12 Eligibility of incidental services.

Incidental services may be financed under the same implementing document which makes funds available for the procurement of equipment only if:

(a) Such services are specified in the purchase contract relating to the equipment;

(b) The price satisfies the requirements of § 201.68; and

(c) The portion of the total purchase contract price attributable to such services does not exceed 25 percent.

5. In § 201.13, paragraph (b)(1)(ii) is revised to read as follows:

§ 201.13 Eligibility of delivery services.

(b) * * *

(1) * * *

(ii) When an eligible flag vessel is not available for shipment, a supplier may request a waiver of the eligibility requirements prior to shipment from the Office of Procurement, Transportation Division, A.I.D., Washington, DC 20523, telephone (703) 875-1300.

6. Section 201.13 paragraph (b)(2) is revised to read as follows:

(b) * * *

(2) *International air transportation costs.* (i) A.I.D. will finance only those international air transportation costs which meet the requirements of this paragraph (b)(2). For the purposes of this paragraph, the term "U.S. flag air carrier" means one of a class of air carriers holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371) authorizing operations between the U.S. or its territories and one or more foreign countries.

(ii)(a) Under all A.I.D. grants and under A.I.D. loans when the authorized source for procurement is Geographic Code 000, A.I.D. will finance only those costs incurred on U.S. flag air carriers unless such service is not available.

(b) Under A.I.D. loans when the authorized source for procurement is Geographic Code 941, A.I.D. will finance only those cost incurred on U.S., cooperating country, or Geographic Code 941 flag air carriers unless such service is not available.

(c) A.I.D. will finance international air transportation costs incurred on aircraft under flag registry of any free world country if the costs are part of the total cost on a through bill of lading paid to an eligible carrier for initial international carriage on an aircraft which is eligible in accordance with

paragraph (b)(2)(ii) (c) or (b) of this section.

(iii)(a) Expenditures for international air transportation furnished by air carriers which are not eligible under the provisions of paragraph (b)(2)(ii) of this section will be financed by A.I.D. only when service by eligible air carriers is unavailable. Criteria for determining when service by eligible air carriers is unavailable are the same as those published at 48 CFR 47.403-1 for determining when U.S. flag air carriers are unavailable. Additional guidance on determining when service is unavailable may be obtained from the Office of Procurement, Transportation Division, telephone (703) 875-1300.

* * *

7. Section 201.13 paragraph (b)(3)(iv) is amended by removing the words "Office of Commodity Management" and inserting, in their place, the words "Office of Procurement".

Date: July 15, 1988.

John F. Owens,
Associate Assistant to the Administrator for Management.

[FR Doc. 88-18440 Filed 8-17-88; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 1208

[NHTSA Docket No. 85-12; Notice 3]
RIN 2127-AB30

National Minimum Drinking Age

AGENCY: Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: On April 7, 1986, the President signed into law the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272. Section 4104 of the Act amends 23 U.S.C. 158, passed in July 1984, which established twenty-one as the National Minimum Drinking Age. The amendment makes permanent the penalty for States that have failed to comply with section 158. It also provides that certain States coming into compliance with the Act will not be penalized if they enact legislation that otherwise complies, but which includes "grandfather" rights to persons between the ages of eighteen

and twenty-one. The amendments made in today's final rule revise portions of the agency's regulation implementing section 158, to reflect these statutory changes. These amendments do not change the substantive requirements for States to avoid the withholding of Federal funds under the Act; they merely implement the changes mandated by section 4104.

DATES: The amendments made by this final rule are effective on August 18, 1988.

FOR FURTHER INFORMATION CONTACT:

In NHTSA: Mr. George Reagle, Associate Administrator for Traffic Safety Programs, Room 5125, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-1755; or Ms. Heidi L. Coleman, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-1834.

In FHWA: Mr. R. Clarke Bennett, Director, Office of Highway Safety, Room 3413, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-2131; or Mr. David Oliver, Office of Chief Counsel, Federal Highway Administration, telephone (202) 366-1350.

SUPPLEMENTARY INFORMATION: On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99-272 was signed into law by the President. Section 4104 of the Act amends 23 U.S.C. 158, passed in July 1984, which established the National Minimum Drinking Age. The amendment makes permanent the penalty on States that have failed to comply with section 158. It also provides that certain States coming into compliance with the Act will not be penalized if they enact legislation that otherwise complies, but which includes "grandfather" rights to persons between the ages of eighteen and twenty-one.

Background

On July 17, 1984, the President signed Pub. L. 98-363 (23 U.S.C. 158), which established the National Minimum Drinking Age. The Act strongly encouraged States to have laws prohibiting the purchase and public possession of alcoholic beverages by any person under 21 years of age by withholding a portion of Federal-aid highway funds from States without these laws. As originally enacted, section 158 required the Secretary of Transportation to withhold a portion of Federal-aid highway funds from any

State whose laws permit the purchase or public possession of any alcoholic beverage by a person who is less than 21 years of age. It provided that if a State does not enact a new law or amend its existing laws to make age 21 the legal minimum drinking age by October 1, 1986, five percent of such State's Federal-aid highway funds would be withheld from funds required to be apportioned on that date under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5), 104(b)(6), (primary system, secondary system, Interstate system (including resurfacing, restoring, rehabilitating and reconstructing or 4R funds) and urban system funds). If by October 1, 1987, no law is adopted or amendments made, ten percent of the State's Federal-aid highway funds required to be apportioned on that date under these sections would be withheld. Any funds withheld from a State's apportionment, in accordance with the Act, would be promptly apportioned to that State if it came into compliance in any succeeding fiscal year.

The constitutionality of the National Minimum Drinking Age, 23 U.S.C. 158, was challenged by the State of South Dakota and upheld by the Supreme Court of the United States in a decision rendered on June 23, 1987. *South Dakota v. Dole*, ___ U.S. ___, 97 L.Ed.2d 171, 107 S.Ct. 2793 (June 23, 1987).

On March 26, 1985, the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) issued a joint rule (51 FR 10376) to implement the National Minimum Drinking Age. The regulation was codified in 23 CFR Part 1208.

In accordance with the regulation, each State was notified by March 28, 1986 of the agencies' preliminary review of its statutes, and by May 30, 1986 of the agencies' final determination of the State's compliance or non-compliance with section 158 for FY 1987. Each State determined to be in non-compliance was permitted to submit substantiating documentation at any time that it amended its laws to conform to § 158. The agencies worked closely with the States to afford them an adequate opportunity to comply with the rule before any funds were withheld. To date, all fifty States and the District of Columbia have enacted conforming Age 21 laws. Only Puerto Rico has not.

At the time the COBRA was signed by the President, a number of States had included sunset clauses in their laws. Section 158 (as originally enacted) provided only for the withholding of funds required to be apportioned on October 1, 1986 and 1987. A typical sunset clause would result in the

lowering of the State's minimum drinking age once the State received these apportionments. For example, the State would pass a 21 law, and receive its apportionments in FY 1987 and 1988. Then, under the sunset clause, the State's minimum drinking age would return to the age in effect prior to enactment of the complying 21 law. Congress enacted section 4104 of the COBRA, amending section 158, primarily to address this situation. Specifically, section 4104 of the COBRA:

- Made permanent the 10 percent withholding of Federal-aid highway funds from States that fail to comply with section 158;
- Permitted a noncomplying State that enacted an otherwise complying age-21 law to afford "grandfather" rights in that law to individuals who are less than 21 years of age, if they are 18 years or older on the day preceding the effective date of the State law and at that time could lawfully purchase or publicly possess any alcoholic beverage in the State. To qualify, the age-21 law containing the grandfather clause must have been in effect "before the later of (A) October 1, 1986, or (B) the tenth day following the last day of the first session of the legislature of a State convene[d] after [April 7, 1986]."
- Provided that funds withheld under section 158 from apportionment *on or before* September 30, 1988 shall be restored to a State that makes a complying law effective, on the day following the law's effective date, if the funds have not lapsed, and that funds withheld under section 158 from apportionment *after* September 30, 1988 shall lapse immediately. It also described the length of time that withheld and subsequently apportioned funds would remain available before they lapse, and the disposition of sums that do lapse.

These statutory amendments, and the regulatory changes the agencies are making to implement them, are described in detail below.

Permanent Withholding of Funds

Subsection (a) of section 4104 makes permanent the annual 10 percent withholding "of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of [Title 23]" from States that fail to comply with section 158. Prior to this amendment, section 158 required the withholding of 10 percent of the apportionments under these sections on October 1, 1987, but not thereafter. The amendment did not alter the withholding of 5 percent of these funds under section 158 on October 1, 1986.

Senator Lautenberg, the author of the amendment, explained:

My amendment will make the 10 percent withholding of highway funds, scheduled to end on September 30, 1988, permanent. * * * This change will essentially establish September 30, 1988, as the date by which the Congress wants to see uniformity in minimum drinking ages across the Nation. S15203, November 12, 1985, daily ed., Congressional Record.

The agencies note that, at this time, all fifty States and the District of Columbia have passed legislation that conforms with the National Minimum Drinking Age. Only Puerto Rico has not. As a result of the statutory amendments, Puerto Rico will be subject to a 10 percent withholding of Federal-aid highway funds every fiscal year until it does pass a conforming law. In addition, if any State currently in compliance with section 158, changes its law so that it no longer meets the National Minimum Drinking Age, the State will be subject to a 10 percent withholding of Federal-aid highway funds on the first day of the fiscal year.

This rule amends the agencies' regulation to reflect the legislative change. The word "first" will be inserted before the phrase "fiscal year" the second place it appears in 23 CFR 1208.4(a). In 23 CFR 1208.4(b), the phrase "each fiscal year after" will replace the phrase "the fiscal year succeeding".

State Grandfather Clauses

As explained by Senator Lautenberg in debates on the floor of the Senate, section 4104 also includes a "lenient provision [which] * * * allows States to phase in their 21 laws and be in compliance with Federal law provided they do so expeditiously." S18211, December 19, 1985, daily ed., Congressional Record.

Specifically, section 4104(b) permits a noncomplying State that enacts an otherwise complying age-21 law, to afford "grandfather" rights in that law to individuals who are less than 21 years of age, if they are 18 years or older on the day preceding the effective date of the State law and at that time could lawfully purchase or publicly possess any alcoholic beverage in the State. To qualify, the age-21 law containing the grandfather clause must have been in effect "before the later of (A) October 1, 1986, or (B) the tenth day following the last day of the first session of the legislature of a State convene[d] after [April 7, 1986]."

As noted above, only Puerto Rico has yet to pass legislation which conforms with the National Minimum Drinking Age, and the agencies understand that

the legislature of this jurisdiction has convened since April 7, 1986, and that 10 days have already lapsed since the last day of its legislative session. Some of the States that passed conforming legislation in response to the Federal law included grandfather rights in their statutes. The agencies reviewed these statutes and determined that they meet the Federal requirements.

Notwithstanding the limited applicability of the change at this time, the agencies are amending their regulation in this final rule to reflect the statutory change, by adding a new § 1208.4(c).

Period of Availability for Funds

Senator Lautenberg explained, in comments preceding its enactment, that section 4104 "ends the reimbursement of withheld funds at the close of fiscal year 1988. The provision also * * * extends the availability of highway funds withheld so that States will not simply lose funds when they lapse under the normal procedures of the highway law." S 18211, December 19, 1985, daily ed., Congressional Record.

Prior to this amendment, section 158 provided that any funds withheld from a State's apportionment would be promptly apportioned to that State if it came into compliance in any succeeding fiscal year. It was silent, however, with regard to the period of time during which the funds withheld from noncomplying States would remain available before they lapsed. As we explained in the preamble to the final rule implementing the 1984 Act (51 FR 10379), the agencies determined that the funds would remain available for the standard periods of availability of the various Federal-aid highway funds.

Section 4104(c), adding subsection 158(b)(1)(B), provides instead that, "No funds withheld [under section 158] from apportionment to any State after September 30, 1988, shall be available for apportionment to such State." In other words, any State which is found to be in noncompliance with the National Minimum Drinking Age law after September 30, 1988, permanently loses any funds withheld after that date. (Funds withheld in earlier fiscal years will lapse in accordance with subsection 158(b)(1)(A), which is discussed in detail below.) Currently, this provision applies only to Puerto Rico. If Puerto Rico fails to meet the requirements of section 158 by September 30, 1988, then funds will be withheld every fiscal year until it complies, and these withholdings will be permanent. In addition, if any State currently in compliance with section 158, changes its law so that it no longer meets the National Minimum Drinking

Age, then funds will be withheld on the first day of the fiscal year and the withholding will be permanent. The disposition of these funds would be made in accordance with subsection 158(b)(4), which is described in detail below.

The remainder of this discussion describes the applicability of the other statutory amendments, which focus primarily on the availability of funds withheld from states found out of compliance with section 158 on or before September 30, 1988.

To summarize these amendments and their applicability, subsections 158(b)(1)(A) and (b)(2), as amended, identify the period of time during which funds withheld on or before September 30, 1988 remain available for apportionment, and when they are to be restored if the State comes into compliance with section 158 before the funds lapse. Since all 50 States and the District of Columbia now have passed laws which have been determined to be in compliance with section 158, these two subsections now apply only to Puerto Rico. Subsection 158(b)(3), as amended, established the period of time during which these subsequently apportioned funds remain available to a State for expenditure. Of the States initially found to be out of compliance with section 158 on April 2, 1987, seven will have had previously withheld funds restored to them after coming into compliance with section 158 before the funds lapse. This section applies to these restored funds. If Puerto Rico complies with the National Minimum Drinking Age before its funds lapse, this section would apply also to its restored funds. If the funds withheld from Puerto Rico lapse before they are restored, their disposition would be made in accordance with subsection 158(b)(4), as amended. In an effort to explain these changes as clearly as possible, the agencies will describe the amendments as they apply to the affected States.

(1) Puerto Rico

Subsection 158(b)(1)(A), as amended, identifies the period of time during which funds withheld from apportionment to a State on or before September 30, 1988 (if the funds would have been apportioned but for the State's noncompliance with section 158) remain available for apportionment. The subsection provides that these funds shall remain available for apportionment for the following periods of time:

* * * section 104(b)(5)(A) funds shall remain available until the end of the fiscal year for which the funds are authorized to be appropriated. * * * section 104(b)(1),

104(b)(2) and 104(b)(6) funds shall remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated [Puerto Rico does not have Interstate highways and does not receive an apportionment of section 104(b)(5)(A) funds.]

On April 2, 1987, 5% of the 1987 fiscal year apportionment was withheld from Puerto Rico based on a finding that it was not in compliance with section 158. On October 1, 1987, 10% of the 1988 fiscal year apportionment was withheld from Puerto Rico on that basis. Puerto Rico was informed that the withheld funds would not be apportioned unless it came into compliance with section 158 before the funds lapse. The funds would lapse in accordance with the periods defined in subsection 158(b)(1)(A), as amended.

In accordance with subsection 158(b)(2), as amended, if Puerto Rico makes a complying law effective before September 30, 1990 (when funds will begin to lapse under subsection 158(b)(1)(A), as amended), these withheld funds will be restored on the day following the effective date of the law. After that date, from the funds previously withheld, only those which still remain available for apportionment will be restored. Any funds that are restored to Puerto Rico shall remain available for expenditure for the periods of time defined in subsection 158(b)(3), as amended. These period of time are described in detail below.

Sums that are still being withheld from Puerto Rico at the end of their period of availability, shall lapse in accordance with section 158(b)(4), as amended, except that section 104(b)(5)(B) funds (Interstate 4R funds) shall no longer be available to Puerto Rico under that section but shall be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

(2) Colorado, Idaho, Montana, Ohio, South Dakota, Tennessee, Wyoming

On April 2, 1987, 5% of the 1987 fiscal year apportionment was withheld also from the seven States listed above, based on a finding that they were not in compliance with section 158 at that time. By October 1, 1987, five of these seven States had complied with section 158 and, therefore, of these seven, 10% of the 1988 fiscal year apportionment was withheld only from South Dakota and Wyoming. Both of these States have since passed laws that conform with section 158.

Subsection 158(b)(2), as amended, provides that any State which is found in noncompliance with the National

Minimum Drinking Age on or before September 30, 1988, and which makes a complying law effective before the last day of the period of availability for the previously withheld funds, shall be apportioned the previously withheld funds remaining available on the day following the effective date of the law. Colorado, Idaho, Montana, Ohio and Tennessee passed complying laws that became effective before September 30, 1987, and had their funds restored in accordance with this provision. South Dakota passed a complying law that became effective on April 1, 1988, and had its funds restored on April 2 of this year. Wyoming passed a complying law that is scheduled to become effective on July 1, 1988, and will have its funds restored, as the subsection provides, on the day following the effective date of this law.

The funds that have been (or will be) restored to these States shall remain available for expenditure for the periods of time defined in subsection 158(b)(3), as amended. This subsection provides that Interstate construction funds, apportioned under section 104(b)(5)(A), shall remain available for expenditure until the end of the fiscal year succeeding the fiscal year in which the funds are apportioned. All remaining funds shall remain available for expenditure until the end of the third fiscal year succeeding the fiscal year in which the funds are apportioned. In their notifications of apportionment, these States have been (or will be) notified of the periods of time during which these restored funds will be available for expenditure.

Sums that have been apportioned to a State but have not been obligated at the end of their period of availability shall lapse, in accordance with section 158(b)(3), as amended, except that section 104(b)(5) (Interstate construction and 4R) funds shall no longer be available to the State under that section but shall be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

This rule amends § 1208.5 of the agencies' regulation, and adds three new subsections, numbered §§ 1208.6, 1208.7 and 1208.8 to reflect these statutory changes. As explained below, the current § 1208.6 has been deleted.

Notification of Compliance

Section 1208.6 of the current regulation prescribed the procedures for notifying each State of its compliance or non-compliance with the National Minimum Drinking Age prior to the apportionment or withholding of funds required to be apportioned on October 1, 1986 and 1987. Since these

apportionments have already been made, this section is being deleted. A new § 1208.9 is being added to prescribe the procedures for notifying each State of its compliance or noncompliance with the National Minimum Drinking Age in the future. The procedural format is essentially being retained. The procedures, however, are being changed slightly, so that the notification to States of their compliance or noncompliance with the National Minimum Drinking Age can be accomplished through FHWA's normal certification of apportionments process. This change is intended to simplify the process for both the Federal government as well as for the States.

These procedures will be followed to advise Puerto Rico of the funds that will be withheld from apportionment if it does not pass legislation that conforms with the National Minimum Drinking Age law. These procedures would be followed also to advise a complying State that subsequently comes out of compliance, of the funds that would be withheld from apportionment to that State.

Federalism Assessment

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it has no federalism implication that warrants the preparation of a federalism assessment.

Economic and Other Effects

The agencies have analyzed the effect of this action and have determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. The regulatory impact is not greater than \$100 million. Accordingly, a full regulatory evaluation is not necessary. Moreover, this rule merely implements the non-discretionary aspects of the new law. Thus, any economic impact that may occur will not be attributable to this regulation, but will be instead the result of the Federal statute and of State decisions on whether to conform with the Federal Statute.

Because this regulation relates to grants, the notice and comment requirements established in the Administrative Procedure Act, 5 U.S.C. 553, are not applicable. Moreover, the legislative changes addressed in this final rule involve no discretion on the part of the agencies. The revisions in this document merely reflect statutory changes mandated by section 4104 of the COBRA. These regulatory changes

require no interpretation and provide the agencies with no discretion.

Because the agencies are not required to publish a notice of proposed rulemaking regarding this rule, the agencies are not required to analyze the effect of this rule on small entities, in accordance with the Regulatory Flexibility Act. The agencies have nonetheless evaluated the effects of this rule on small entities. Based on the evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. If funds are withheld under the regulation, the withholding will be from the States which are not small entities.

The agencies have also analyzed this action for the purpose of the National Environmental Policy Act. The agencies have determined that this action will not have any effect on the human environment.

Effective date

Because the amendments are not covered by the Administrative Procedure Act, and since they only contain technical changes or merely implement legislative changes and do not impose any additional requirements, the amendments are effective upon publication in the Federal Register.

List of Subjects in 23 CFR Part 1208

Alcohol, Highway safety.

In accordance with the foregoing, Part 1208 of Title 23 of the Code of Federal Regulations is amended as follows:

PART 1208—[AMENDED]

1. The authority citation for Part 1208 is revised to read as follows:

Authority: 23 U.S.C. 158; delegation of authority at 49 CFR 1.48 and 1.50.

§ 1208.4 [Amended]

2. In § 1208.4(a), the word "first" is added before the phrase "fiscal year" the second place it appears. In § 1208.4(b), the words "the fiscal year succeeding" are removed, and in their place is added the phrase "each fiscal year after".

3. Section 1208.4(c) is added to read as follows:

* * * * *

(c) A State that has in effect a law which permits the purchase and public possession in the State of any alcoholic beverage by a person who is less than 21 years of age, but 18 years or older on the day preceding the effective date of the State law and at that time could lawfully purchase or publicly possess any alcoholic beverage in the State, will be deemed to be in compliance with

paragraphs (a) and (b) of this section in each fiscal year in which the law is in effect, provided:

(1) The law must be in effect before the later of (i) October 1, 1988 or (ii) the tenth day following the last day of the first session the legislature of the State convenes after April 7, 1988; and

(2) The State law otherwise makes unlawful the purchase and public possession in the State of any alcoholic beverage by a person who is less than 21 years of age.

4. Section 1208.5 is revised to read as follows:

§ 1208.5 Period of availability of withheld funds.

(a) Funds withheld under § 1208.4 from apportionment to any State on or before September 30, 1988 will remain available for apportionment as follows:

(1) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(A) but for this section, the funds will remain available until the end of the fiscal year for which the funds are authorized to be appropriated.

(2) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(B) but for this section, the funds will remain available until the end of the second fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(3) If the funds would have been apportioned under 23 U.S.C. 104(b)(1), 104(b)(2) or 104(b)(6) but for this section, the funds will remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(b) Funds withheld under § 1208.4 from apportionment to any State after September 30, 1988 will not be available for apportionment to the State.

5. Section 1208.6 is revised to read as follows:

§ 1208.6 Apportionment of withheld funds after compliance.

Funds withheld under § 1208.4 from apportionment, which remain available for apportionment under § 1208.5(a), will be apportioned to any State that makes effective a law prohibiting the purchase or public possession in the State of any alcoholic beverage by a person who is less than 21 years of age before the last day of the period of availability as defined in § 1208.5(a). The funds will be apportioned to the State on the day following the effective date of the law.

6. Section 1208.7 is added to read as follows:

§ 1208.7 Period of availability of subsequently apportioned funds.

(a) Funds apportioned pursuant to § 1208.6 will remain available for expenditure as follows:

(1) Funds apportioned under 23 U.S.C. 104(b)(5)(A) will remain available until the end of the fiscal year succeeding the fiscal year in which the funds are apportioned.

(2) Funds apportioned under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) will remain available until the end of the third fiscal year succeeding the fiscal year in which the funds are apportioned.

(b) Sums apportioned to a State pursuant to § 1208.6 and not obligated at the end of the periods defined in § 1208.7(a), shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

7. Section 1208.8 is added to read as follows:

§ 1208.8 Effect of noncompliance.

If a State has not made effective a law prohibiting the purchase and public possession in the State of any alcoholic beverage by a person who is less than 21 years of age at the end of the period for which funds withheld under § 1208.4 from apportionment are available for apportionment to a State under § 1208.5, then such funds shall lapse or, in the case of funds withheld from apportionment under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

8. Section 1208.9 is added to read as follows:

§ 1208.9 Procedures affecting States in noncompliance.

(a) Every fiscal year, each State determined to be in noncompliance with the National Minimum Drinking Age, based on NHTSA's and FHWA's preliminary review of its statutes for compliance or non-compliance, will be advised of the funds expected to be withheld under § 1208.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is in noncompliance with the National Minimum Drinking Age based on their preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the National Highway Traffic Safety

Administration, 400 Seventh Street SW., Washington, DC 20590.

(c) Every fiscal year, each State determined to be in noncompliance with the National Minimum Drinking Age, based on NHTSA's and FHWA's final determination of compliance or noncompliance, will receive notice of the funds being withheld under § 1208.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Issued on August 12, 1988.

Robert E. Farris,
Federal Highway Administrator.
Diane K. Steed,
National Highway Traffic Safety
Administrator.

[FR Doc. 88-18779 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-59-M, 4910-22-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1297-88]

Special Independent Counsel for Members of Congress

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends 28 CFR Part 0 to reflect the policy within the Department of Justice for the special handling of allegations of criminality against a Member of Congress. It is being placed in the Code of Federal Regulations so that the Department's regulations will contain an accurate description of the Attorney General's prosecutorial authority in this area.

EFFECTIVE DATE: August 11, 1988 except as to any criminal investigation certified within 30 days thereof by the Assistant Attorney General for the Criminal Division to the Attorney General as being ongoing on the effective date.

FOR FURTHER INFORMATION CONTACT:

John C. Keeney, Criminal Division; telephone number: 202-633-2621. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This regulation sets forth the policy within the Department of Justice for the handling of allegations against Members of Congress. It is designed to promote confidence in the integrity of investigations and prosecutions for violations of federal criminal law and is based in part on the regulations used by the Department in connection with the Watergate Special Prosecutors. By

announcing a policy that special independent counsels will investigate any criminal law allegation against a Member of Congress, the Department will be able to remove any real or apparent concern that a particular investigation may be politically motivated. Since the decision whether to prosecute will be made by an individual who has no long-term affiliation with the Department or any branch of government, it will demonstrate to the public that neither political hostility nor political favoritism played a part in the final decision. This rule will therefore provide for nondiscretionary referral to a special independent counsel whenever the Attorney General determines that there is specific and credible evidence that any Member of Congress has violated a federal criminal law other than certain specified misdemeanors.

This is not a major rule within the meaning of Exec. Order No. 12291. This will not have an impact on a significant number of small businesses. 5 U.S.C. 901.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies).

By the authority vested in me including 28 U.S.C. 509, 510, 515, 516, 517, 519 and 5 U.S.C. 301 and 3101, Subpart B of Part 0 of title 28 of the Code of Federal Regulations, is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for Part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303, 3101; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 517, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1106, 3801 *et seq.*; 50 U.S.C. App. 2001-2017p; Pub. L. No. 91-513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Subpart B is amended by adding a new § 0.14 to read as follows:

§ 0.14 Special Independent Counsel for Members of Congress.

(a) *Initial investigation.* Whenever the Attorney General receives information from any source indicating that either a United States Senator or Member of the House of Representatives has violated any federal criminal law other than a violation classified as a Class B or C misdemeanor, he shall determine within 15 days whether there are sufficient grounds to initiate a preliminary investigation. If within that 15-day period the Attorney General determines that the information is not specific or is

not from a credible source, then the Attorney General shall close the matter. If within that 15-day period the Attorney General determines that the information is specific and from a credible source, or is unable to so determine, the Attorney General shall, in either case, commence a preliminary investigation with respect to that information, except as provided in paragraph (j) of this section.

(b) *Preliminary investigation.* If a preliminary investigation is undertaken as specified in paragraph (a) of this section, the Attorney General shall conduct such preliminary investigation within 90 days to determine whether there are reasonable grounds to believe that further investigation is warranted. In conducting this investigation, the Attorney General shall not convene grand juries, enter into plea bargains, grant immunity, or issue subpoenas. If it is determined that there is no reasonable grounds to believe that further investigation is warranted, the matter shall be closed and the Attorney General shall so notify the subject of the preliminary investigation. If it cannot be determined within 90 days whether a preliminary investigation should be undertaken or if it is determined that one should be undertaken, the matter shall be referred to a special independent counsel under paragraph (c) of this section.

(c) *Appointment of a Special Independent Counsel.* The Attorney General shall appoint a special independent counsel to investigate any Member of Congress where under paragraph (b) of this section that appointment is required. The Attorney General shall define the special independent counsel's jurisdiction and may expand it whenever he deems necessary. The initial grant of jurisdiction shall be deemed to include the authority to investigate and prosecute federal crimes, other than those classified as Class B or C misdemeanors, that may arise out of the matter initially referred to the special independent counsel by the Attorney General, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses. The special independent counsel shall be an individual with appropriate experience to conduct a prompt, thorough, and efficient investigation. The Attorney General shall not appoint as a special independent counsel any person who holds any office or profit or trust in any branch of the government of the United States. The Attorney General may disclose the identity of the special independent counsel and the scope of his jurisdiction at any point after the appointment if it would be in the best

interest of justice. If the special independent counsel resigns, dies, or is removed, the Attorney General may appoint a replacement to complete the investigation.

(d) *Authority of the Special Independent Counsel.* Any special independent counsel appointed under this section shall exercise, within the scope of his jurisdiction, the full power and independent authority to exercise all investigative and prosecutorial functions of the Attorney General, except for those matters that specifically require the Attorney General's personal action under 18 U.S.C. 2516. Neither the Attorney General nor any other officer or employee of the Department will countermand or interfere with any decision or action of the special independent counsel regarding the matter under investigation. Except as provided herein, the special independent counsel shall determine whether and to what extent he will inform or consult with the Attorney General or others within the Department about the conduct of his duties and responsibilities. The special independent counsel's authority includes:

- (1) Conducting proceedings before grand juries and other investigations;
- (2) Participating in court proceedings and engaging in any litigation, including civil and criminal matters, that the special independent counsel deems necessary;
- (3) Appealing any decision of a court in any proceeding in which the special independent counsel participates in an official capacity;
- (4) Reviewing all available documentary evidence;
- (5) Determining whether to contest the assertion of any testimonial privilege;
- (6) Receiving appropriate national security clearances;
- (7) Making an application to any federal court for a grant of immunity to any witness, or for warrants, subpoenas, or other court orders, and for purposes of 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States Attorney or the Attorney General;
- (8) Inspecting, obtaining, or using the original or a copy of any tax return, in accordance with applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1986 and the regulations issued thereunder, exercising the powers vested in a United States Attorney or the Attorney General;
- (9) Initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing

indictments, filing informations, and handling all aspects of any case, in the name of the United States; and

(10) Consulting with the United States Attorney for the district in which any violation of law with respect to which the special independent counsel is appointed was alleged to have occurred.

(e) *Personnel and Budget.* Any special independent counsel appointed under this section shall be authorized to request the assignment of any Department employee to assist the special independent counsel. The special independent counsel shall assign the duties of such employees while they are assigned to the special independent counsel. If necessary, the special independent counsel may request that the Attorney General hire additional personnel from outside the Department. All personnel in the Department, including United States Attorneys, shall cooperate to the fullest extent possible with the special independent counsel. The Attorney General shall determine the budget for the special independent counsel and may approve any increases that may be necessary.

(f) *Responsibilities of the Special Independent Counsel.* When the special independent counsel has completed the investigation the special independent counsel shall either:

(1) Initiate and complete a criminal prosecution of the subject Member of Congress or

(2) Issue a final statement to the Attorney General and the subject Member of Congress reporting solely that his investigation is complete and that no criminal charge will be brought.

In addition, a special independent counsel may advise the House of Representatives or the Senate, as the case may be, of any substantial and credible information permitted by law to be disclosed which such special independent counsel receives in carrying out the responsibilities under this section, that may constitute grounds for expulsion or other disciplinary action.

(g) *Removal.* The special independent counsel will not be removed from office except for extraordinary improprieties.

(h) *Department Regulations.* The Department's regulations, including those governing recusal, disclosure of information, and policies, including those pertaining to the conduct of criminal investigations, shall apply to all matters arising under this section, and to the special independent counsel, all existing personnel assigned to him and all new personnel hired with the approval of the Attorney General at the special independent counsel's request.

(i) *Assistance of Assistant Attorney General for the Criminal Division.* In all matters under this section either the Attorney General or the special independent counsel may request the assistance of the Assistant Attorney General for the Criminal Division; provided however, that notwithstanding any such assistance, the Attorney General must personally determine whether a preliminary investigation is required under paragraphs (a) and (b) of this section; appoint and define the jurisdiction of the special independent counsel under paragraph (c) of this section; determine the special independent counsel's budget under paragraph (e) of this section; and when appropriate remove the special independent counsel under paragraph (g) of this section. The special independent counsel may not delegate his function under paragraph (f) of this section.

(j) *Exception For Investigation Not Initially Involving Member of Congress.* When allegations involving criminality against a Member of Congress arise out of a criminal investigation being conducted by the Attorney General, the Attorney General may allow that ongoing investigation to continue and include said Member of Congress instead of invoking the procedures set forth in this section.

August 11, 1988.

Edwin Meese, III

Attorney General.

[FR Doc. 88-18595 Filed 8-17-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Approval of Amendment to the Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of an amendment to the Utah permanent regulatory program (hereinafter referred to as the Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment alters the criteria used in determining the significance of impacts that mining will have on alluvial valley floors (AVF's) to delete the farm income test in

accordance with revisions to the corresponding Federal regulation.

EFFECTIVE DATE: August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102; Telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. Information regarding the general background of the Utah program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval, can be found in the January 21, 1981 *Federal Register* (46 FR 5899). Actions taken subsequent to the approval of the Utah program may be found at 30 CFR 944.15 and 944.16.

II. Discussion of the Amendment

On September 24, 1987, Utah submitted a proposed amendment to the Utah regulations for OSMRE's review and approval (Administrative Record No. UT-462). OSMRE published a notice in the November 13, 1987 *Federal Register* announcing receipt of the proposed amendment and inviting public comment on its adequacy (52 FR 43622, Administrative Record No. UT-476).

The notice stated that a public hearing would be held on December 8, 1987, only if requested. The comment period closed on December 14, 1987. Because no requests to hold a hearing were received, a hearing was not held.

After reviewing the proposed amendment and all comments received, OSMRE notified Utah on March 7, 1988 (Administrative Record No. UT-481), of a provision in the proposed amendment that appeared to be inconsistent with the Federal regulations. By letter dated April 6, 1988, Utah submitted a revised amendment (Administrative Record No. UT-483). OSMRE then published a *Federal Register* notice on June 3, 1988, to reopen the comment period and allow the public an opportunity to comment on the revised amendment (53 FR 20338, Administrative Record No. UT-491). The comment period closed on June 20, 1988.

The revised amendment to the Utah program would delete the last sentence of the Surface Coal Mining Rules/Underground Coal Mining Rules (SMC/UMC) 785.19(e)(2) that requires the use of a farm income test in determining the significance of impacts that mining

operations will have on farming operations on or near an AVF. However, the amended regulation would retain the requirement that the determination of significance of impacts be based on the effects mining would have on farm production over the life of the mine.

III. Director's Findings

The Director finds, in accordance with SMCRA, 30 CFR 732.15, and 30 CFR 732.17, that the program amendment Utah submitted on September 24, 1987, and subsequently revised on April 6, 1988, meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below. The Director is approving the amendment with the provision that the rule be promulgated in identical form to the rule reviewed by OSMRE and the public.

The proposed amendment of SMC/UMC 785.19(e)(2) deletes the requirement that the effect of mining operations on farming on or near AVF lands be determined to be significant if it removed, over the life of the mine, a part of a farm's production that would decrease the farm's annual income. The effect of this amendment is to eliminate the requirement to apply a farm income test to determine effects of mining on AVF's. The remaining part of amended SMC/UMC 785.19(e)(2) requires the determination of significance of mining impacts to be based on the relative importance of the vegetation and water of developed grazed or hayed AVF lands to the farm's production over the life of the mine, or more stringent site-specific criteria.

The Federal regulations governing AVF's do not require a farm income test, rather, 30 CFR 785.19(b)(2)(ii) requires that the determination of impacts that mining operations will have on farming be based on the relative importance of affected vegetation and water of developed grazed or hayed AVF lands to the farm's production over the life of the mine.

There are only minor, nonsubstantive differences between the language in the proposed Utah amendment and the Federal regulations. Therefore, the Director finds the amended Utah regulation no less effective than the corresponding Federal regulation.

IV. Public and Agency Comments

Public Comments

The National Wildlife Federation (NWF) objected to the removal of the farm income test from SMC/UMC 785.19(e)(2). NWF stated that the overall effect of the amendment is to delete any

standard for application of the statutory exclusions for AVF's. However, on April 6, 1988, Utah revised its amendment to include a "life of the mine" impact standard similar to that of the Federal regulations. Therefore, this comment is now moot.

NWF also contends that no basis exists for requiring the impact on agricultural production to be measured over the life of the mine rather than on an annual basis. The rationale for this contention is that the impact in any single year could be great enough to put a farmer out of business, whereas the same impact, averaged over a long period of time, would appear insignificant. The Director believes these circumstances are unlikely to occur; however, he notes that both SMCRA (section 510(b)(5)(A)) and the Federal regulations require evaluation of the importance of the affected area to the farm's production, not its income. The corresponding Federal rule also uses a "life of the mine" standard when evaluating the impact on farm production. This standard has been upheld by the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79-1144, October 1, 1984).

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11), comments were also solicited from various agencies with an actual or potential interest in the Utah program. The following agencies acknowledged receipt of the proposed amendment but did not provide any substantive comments: (1) Bureau of Mines, (2) Soil Conservation Service, (3) Mineral Management Service, (4) Bureau of Land Management, (5) National Park Service, and (6) Environmental Protection Agency (Region VIII and Headquarters).

V. Director's Decision

The Director, based on the above findings, is approving the amendments as submitted by Utah on September 24, 1987, and as revised on April 6, 1988. The Director is amending 30 CFR Part 944 to reflect approval of this State program amendment. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: August 11, 1988.

Robert E. Boldt,
Deputy Director, Office of Surface Mining
Reclamation and Enforcement.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 944—UTAH

1. The authority citation for Part 944 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding a new paragraph (m) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

(m) The following amendment is approved effective August 18, 1988: Revision of SMC/UMC 785.19(e)(2)

regarding alluvial valley floors as submitted by Utah to OSMRE on September 24, 1987, and revised by Utah on April 6, 1988.

[FR Doc. 88-18751 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-88-64]

Special Local Regulations for the 1988 Power Boat Regatta, Susquehanna River, Havre De Grace, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Susquehanna Optimist Club Power Boat Regatta. This event will be held on the Susquehanna River, west of Garrett Island. The special local regulations are necessary to control vessel traffic within the immediate area of the races due to the confined nature of the waterway and the expected congestion at the time of the event. The effect will be to restrict general navigation in the regulated area for the safety of the spectators and the participants in the event.

EFFECTIVE DATES: These regulations are effective from 10:00 a.m. to 7:00 p.m., August 27 and 28, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking to establish permanent special local regulations for the Susquehanna Optimist Club Power Boat Regatta will be published in the *Federal Register* (53 FR 28018; July 28, 1988), and interested persons were invited to participate in the rulemaking by submitting written views, data, or arguments by September 9, 1988. However, since the 1988 Susquehanna Optimist Club Power Boat Regatta is to be held on August 27 and 28, 1988 it becomes necessary to establish temporary regulations to cover this year's event.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project

attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The area covered by these regulations is the same as that covered by special local regulations issued for years. The Optimist Club Power Boat Regatta is an annual weekend race consisting of 3 laps around an oval course. Three to twelve boats will race at one time with speeds up to 140 miles per hour. The races will continue for 3 to 4 hours. The special local regulations provide safety for the persons participating in races and control spectator craft during the event.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0564 is added to read as follows:

§ 100.35-0564 Susquehanna River, Havre De Grace, Maryland.

(a) *Definitions*—(1) *Regulated Area*. The waters of the Susquehanna River west of Garrett Island, bounded on the south by the Conrail Railroad Bridge at latitude 39°33'34.0" North, and on the north by the B & O Railroad Bridge at latitude 39°33'57.0" North.

(2) *Coast Guard Patrol Commander*. The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations*. (1) Except for vessels operated by the Susquehanna Optimist Club and participants in the Optimist Club Power Boat Regatta, no person or vessel may enter or remain in the regulated area without the permission of the Coast Guard Patrol Commander.

(2) Spectator vessels may enter and anchor in the designated spectator anchorage areas without the permission of the Patrol Commander, if they proceed at a slow no wake speed.

(3) The operator of any vessel in the immediate vicinity of the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Coast Guard commissioned, warrant, or petty officer

on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any Coast Guard commissioned, warrant, or petty officer.

(c) *Effective period*. These regulations are effective from 10:00 a.m. to 7:00 p.m., August 27 and 28, 1988.

Dated: August 10, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-18776 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-88-63]

Special Local Regulations for Trump's Castle Grand National Powerboat Championship

AGENCY: Coast Guard, DOT.

ACTION: Temporary regulations with request for comments.

SUMMARY: The Coast Guard is temporarily amending the regulations in 33 CFR 100.505 for the New Jersey Offshore Grand Prix. This amendment changes the name, date, race course, spectator anchorage areas, and regulated area for this year's event. Last year the race was held on Sunday, July 26, 1987, off the southern New Jersey coast between Margate City at Great Egg Harbor Inlet and Brigantine Shoal. This year the race has been renamed the Trump's Castle Grand National Powerboat Championship, the race and regulated area has been modified slightly, and the date of the event has been changed.

EFFECTIVE DATES: These regulations are effective from 10:00 a.m. to 3:30 p.m., Saturday, September 24, 1988. In case of inclement weather requiring a postponement of the event, these regulations are effective from 10:00 a.m. to 3:30 p.m., Sunday, September 25, 1988.

ADDRESSES: Comments should be mailed or hand delivered to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments will be available for inspection and copying at Room 209 of that address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking has not been published for this regulation. Following normal rulemaking procedures would have been impractical. The application for the event was received on July 22, 1988. However, the race course and spectator anchorage areas were not finalized until July 28, 1988, leaving insufficient time remaining to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Although this regulation is published without prior notice, an opportunity for public comment is being provided to ensure that the regulation is both reasonable and workable. These regulations may be altered prior to the event based on any comments that are received. Persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESSES" in this preamble. Commenters should include their names and addresses, identify the docket number for this regulation (CGD 05-88-63), and give reasons for their remarks. Due to the limited time for comment, verbal comments may be submitted by telephone. Based upon comments received, the regulation may be changed for this and future events.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Prior to 1987, the New Jersey Offshore Grand Prix was an annual high speed powerboat race held off the Northern New Jersey coast between Asbury Park and Seaside Park, New Jersey. Because the event traditionally was held on the same day each year (the third Wednesday in July) and in the same area, the Coast Guard published a permanent rule in § 100.306 of Title 33 of the Code of Federal Regulations.

Section 100.306 was renumbered 100.505 in 1987, when the sponsor moved the race down the coast to the vicinity of Atlantic City, New Jersey and held the event on Sunday, July 23, 1987. The sponsor took this action to take advantage of the popularity of this resort area and to offer an additional recreational activity that would complement the existing attractions in Atlantic City.

This event is sponsored by the New Jersey Offshore Power Boat Racing Association and is sanctioned by the American Power Boat Association and

the Union of International Motorboating. Approximately 70 powerboats ranging from 18 to 50 feet long will race 150 nautical miles in various classes over a 30 nautical mile course. Race headquarters will be located in Trump's Castle, Atlantic City, New Jersey.

Coast Guard patrol vessels will be positioned at both inlets to direct vessels to temporary spectator anchorages and to instruct transiting vessels how to proceed safely around the race course.

The sponsor will provide committee boats to lead the race vessels in a procession to an from the race course. The sponsor also will provide more than 70 vessels to assist the Coast Guard and local government agencies in patrolling this event.

The race course has been altered slightly from the one used in 1987. It is a flattened, elongated triangle within the regulated area extending along the New Jersey coastline from Great Egg Harbor Inlet to Brigantine Shoal Inner Buoy 4BS (LL 40), thence three nautical miles east, thence southwestward to Great Egg Harbor Inlet. The regulated area is the waters of the Atlantic Ocean from the shoreline at Great Egg Harbor Inlet to the tank at Brigantine, New Jersey, and extending offshore approximately two miles beyond the outer leg of the race course.

To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area and has established two temporary spectator anchorages, at Great Egg Harbor Inlet and Absecon Inlet, for what is expected to be a large spectator fleet.

In order to publicize these regulations, the Coast Guard will publish details in the Local Notice to Mariners and the *Federal Register*, and members of the Coast Guard Auxiliary will be present in the vicinity of the race site to inform vessel operators to this regulation and other applicable laws.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding temporary § 100.35-0563 to read as follows:

§ 100.35-0563 Atlantic Ocean, off Atlantic City, New Jersey.

(a) *Definitions*—(1) *Regulated Area*. The waters of the Atlantic Ocean bounded by the shoreline and a line drawn across the outermost points of land on either side of Absecon Inlet, and by a line drawn from the shoreline at Longport, New Jersey, at latitude 39°18.2' North, longitude 74°32.3' West, thence to Great Egg Harbor Inlet Outer Lighted Whistle Buoy GE (LL 75/1095), at latitude 39°17.0' North, longitude 74°30.2' West, thence northeastward to latitude 39°22.3' North, longitude 74°12.3' West; thence to Brigantine Inlet Approach Wreck Lighted Buoy WR (LL 35), at latitude 39°24.8' North, longitude 74°13.8' West; and thence to the shoreline at latitude 39°24.8' North, longitude 74°21.5' West.

(2) *Coast Guard Patrol Commander*. The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Cape May.

(3) *September Anchorage Areas*—(i) *Absecon Inlet Spectator Area*. The waters bounded by a line drawn between the following points: latitude 39°22'03.6" North, longitude 74°24'00" West; latitude 39°21'28.8" North, longitude 74°23'55.2" West; latitude 39°21'54" North, longitude 74°21'13.2" West; and latitude 39°22'31.2" North, longitude 74°21'27.6" West.

(ii) *Great Egg Inlet Spectator Area*. The waters bounded by a line drawn between the following points: latitude 39°18'25.2" North, longitude 74°30'16.8" West; latitude 39°17'51" North, longitude 74°30'46.8" West; latitude 39°16'36" North, longitude 74°28'53.4" West; and latitude 39°17'14.4" North, longitude 74°28'16.8" West.

(b) *Special Local Regulations*. (1) Except for participants in the Trump's Castle Grand National Powerboat Championship and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any Coast Guard commissioned, warrant, or petty officer onboard a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any Coast Guard commissioned, warrant or petty officer.

(3) Spectator vessels may anchor in the spectator anchorage areas specified in paragraphs 3(i) and 3(ii) of these regulations.

(4) The Coast Guard Patrol Commander may allow vessels to transit the regulated area at any time a race heat is not being run.

EFFECTIVE DATES: These regulations are effective from 10:00 a.m. to 3:30 p.m., Saturday, September 24, 1988. In case of inclement weather requiring a postponement of the event, these regulations are effective from 10:00 a.m. to 3:30 p.m., Sunday, September 25, 1988.

Dated: August 10, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-18775 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3431-4]

Approval and Promulgation of Air Quality Implementation Plans; Missouri; Approval of Variance Modification for Pea Ridge Iron Ore Pellet Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving a revision to the Missouri State Implementation Plan (SIP). The action approves a variance modification which will allow the St. Joe Minerals Corporation, Pea Ridge Iron Ore Company pellet plant to continue to emit particulate in excess of the state process weight regulation. The variance order establishes interim emission rates for the affected process equipment which will prevent violations of the National Ambient Air Quality Standards (NAAQS).

DATES: This action will become effective on October 17, 1988, unless notice is received by September 19, 1988, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Dewayne E. Durst at the EPA Regional Office (address listed below). Copies of the documents relevant to this action are available for public inspection during normal business hours at:

Environmental Protection Agency,
Region VII, Air Branch, 726 Minnesota
Avenue, Kansas City, Kansas 66101

Missouri Department of Natural Resources, Air Pollution Control Program, 205 Jefferson Street, Jefferson City, Missouri 65101
Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dewayne E. Durst at (913) 236-2893 (FTS 757-2893).

SUPPLEMENTARY INFORMATION: On May 21, 1987, after proper notice and public hearing, the Missouri Air Conservation Commission (MACC) granted a variance to the St. Joe Minerals Corporation for its Pea Ridge Iron Ore facility located in Washington County near Sullivan, Missouri. The variance was received by EPA on November 5, 1987. The variance allows five shaft type pelletizing furnaces to emit particulate matter in excess of Missouri Rule 10 CSR 10-3.050, Restriction of Emissions of Particulate Matter from Industrial Processes. This variance is a modification to a variance issued to the company on March 23, 1983. The interim allowable particulate matter emission rates are the same as those contained in the prior variance. The prior variance required that the plant install control equipment and demonstrate full compliance with Missouri regulations by December 31, 1988. Earlier attempts at installing and operating control equipment on the pelletizing furnaces failed because of corrosion. The variance called for submittal of a final control plan by June 30, 1987. Development of the final control plan required pilot plant testing of various control equipment and construction-material options to determine what combination would be acceptable for this application. The equipment development activities did not proceed on schedule because of the severely depressed market for iron ore pellets which caused economic problems for the company. Plant curtailment and intermittent shutdowns have also delayed control equipment design. The final control plan could not be completed without the results of the pilot plant work.

Dispersion modeling of the particulate matter emissions from the plant was conducted before the prior variance was issued. That modeling was performed utilizing maximum allowable emissions during the period of the variance. The modeling also utilized version 4 of the Industrial Source Complex Short Term (ISCST) model and compared the predicted air quality to the NAAQS for total suspended particulate matter. The modeling showed that the standards would not be exceeded in the vicinity of the plant.

In preparation for developing the request for this variance extension, additional stack tests were conducted at the plant. These tests included particulate sizing to determine the PM₁₀ emission rates. Using these PM₁₀ emission estimates and version 6 of the ISCST model, ground-level PM₁₀ concentrations were predicted. The predicted levels were well below the PM₁₀ air quality standards. The plant is located in an area which is designated attainment for primary and secondary NAAQS for particulates.

The compliance schedule in this variance modification requires full and final compliance with Missouri Rule 10 CSR 10-3.050 by June 30, 1991. The economic difficulties of the company caused by the depressed market for iron ore pellets are predicted to continue for the foreseeable future and, therefore, the compliance schedule provides considerable lead time for final compliance to occur. The variance modifications as issued by the state must be renewed on an annual basis until the expiration date of June 30, 1991. However, EPA has evaluated the acceptability of the variance until the expiration date, so if implementation of the control plan proceeds according to the dates contained in the compliance schedule, EPA will take no additional action on this matter.

This approval does not provide for a permanent relaxation of the particulate matter emission rates for the five shaft type pelletizing furnaces at the Pea Ridge facility. Even though the state of Missouri has prepared a revision to its SIP to incorporate the PM₁₀ air quality standards, that revision will not change the particulate matter emission regulations presently contained in the approved SIP. Those regulations, including Missouri Rule 10 CSR 10-3.050, will remain in effect even after EPA acts on Missouri's PM₁₀ SIP.

Under the Clean Air Act, EPA is required to approve a SIP revision if it meets the requirements of section 110(a)(2) of the Act. One requirement of the section is that the state must demonstrate that a revision would not cause or contribute to any violations of the NAAQS. As discussed above, EPA has determined that the source, operating at the particulate emission rate allowed by the variance, will not cause or contribute to any violations of the NAAQS. In addition, EPA finds that all other relevant requirements of section 110(a)(2) have been met. **ACTION:** EPA takes final action to approve the St. Joe Minerals Corporation, Pea Ridge Iron Ore facility

variance modification, adopted by the MACC on May 21, 1987.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial issue and anticipates no adverse comments. This action will be effective 60 days from the date of the *Federal Register* notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn and two subsequent notices will be published. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 17, 1988.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 17, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a

substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference, Particulate matter, Sulfur dioxide.

Note: Incorporation by reference of the Missouri Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

Date: August 11, 1988.

Lee M. Thomas,
Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart AA—Missouri

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Missouri

2. Section 52.1320 is amended by adding a new paragraph (c)(64) to read as follows:

§ 52.1320 Identification of plan.

(c) * * *

(64) A variance from Missouri Rule 10 CSR 10-3.050, Restriction of Emission of Particulate Matter from Industrial Processes, for the St. Joe Minerals Corporation, Pea Ridge Iron Ore facility, was submitted by the Missouri Department of Natural Resources on October 22, 1987.

(i) Incorporation by reference.
(A) Variance order modification dated May 21, 1987, issued to St. Joe Minerals Corporation allowing certain equipment at its Pea Ridge Iron Ore facility to operate beyond the limitations specified in Rule 10 CSR 10-3.050, Restriction of emissions of Particulate Matter from Industrial Processes, for outstate Missouri area, effective May 21, 1987.

3. Section 52.1335 is amended by removing the two existing entries to St. Joe Minerals Corp., Pea Ridge Iron Ore facility near the end of the table in § 52.1335(a) and adding a new entry at the end of the table to read as follows:

§ 52.1335 Compliance Schedules.

(a) * * *

Source	Location	Regulation involved	Date adopted	Effective date	Final compliance date
St. Joe Minerals Corporation, Pea Ridge Iron Ore Facility.	Washington County, Missouri.....	10 CSR 10.-3.050	May 21, 1987.....	May 21, 1987.....	June 30, 1991.

[FR Doc. 88-18730 Filed 8-17-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[EPA Docket No. AM045-PA; FRL-3431-6]

Commonwealth of Pennsylvania; Approval Status of Odor Control Provisions of the Pennsylvania State Implementation Plan

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is today withdrawing its final rule, previously published at 51 FR 18438 (May 20, 1986) in accordance with the Court's decision in *Concerned Citizens of Bridesburg vs. EPA* (Court of Appeals, Third Circuit; December 18, 1987).

DATE: This action will be effective on August 18, 1988.

ADDRESSES: Copies of relevant material pertaining to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, 841 Chestnut Building, Eighth Floor, Philadelphia, PA 19107, Attn: Joseph W. Kunz.

FOR FURTHER INFORMATION CONTACT: Donna Abrams (3AM11) at the EPA, Region III address above or call (215) 597-9134.

SUPPLEMENTARY INFORMATION: On May 20, 1986, the Environmental Protection Agency (EPA) issued a final rule reversing its former approval of State and local odor emission control regulations as part of the Pennsylvania SIP 51 FR 18438. Two citizen groups, Concerned Citizens of Bridesburg and Delaware Valley Citizens' Council for

Clean Air, petitioned for judicial review of EPA's final action in the United States Court of Appeals for the Third Circuit. On December 18, 1987, the Court of Appeals granted the citizen groups' petition and remanded the case to EPA, finding that the Agency failed to follow all the procedural steps required under the Clean Air Act. *Concerned Citizens of Bridesburg vs. EPA* Docket No. 86-3380 (Court of Appeals, Third Circuit; December 18, 1987).

In accordance with the Court's decision in *Bridesburg*, EPA is withdrawing its final rule, previously published at 51 FR 18438 (May 20, 1986). As a result of this action, State and local odor emission control regulations which had been approved by EPA as part of the Pennsylvania SIP prior to the May 24, 1986 rulemaking are approved provisions of the Pennsylvania SIP until further notice. The affected provisions

are set forth in the May 20, 1986 Federal Register Notice.

Under 5 U.S.C 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

This action does not require review by the Office of Management and Budget under the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control,
Intergovernmental relations, Reporting
and recordkeeping requirements.

Dated: August 12, 1988.

Lee M. Thomas,
Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is as follows:

PART 52—[AMENDED]

Subpart NN—Pennsylvania

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

§ 52.2023 [Amended]

2. Section 52.2023 is amended by removing paragraph (h).

[FR Doc. 88-18731 Filed 8-17-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3431-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 to Eli Lilly and Company, for certain wastes generated at its Clinton, Indiana facility. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify to revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: August 18, 1988.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-88-ELEF-FFFF." The public may copy material from any regulatory docket at a cost of \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Scott Maid, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4783.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

Eli Lilly and Company petitioned the Agency to exclude from hazardous waste control certain wastes it has generated. After evaluating the petition, on November 27, 1985, EPA proposed to exclude specific wastes generated by thirteen facilities, including Eli Lilly and Company (see 50 FR 48911, November 27, 1985) from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32. Final decisions were published for eleven of these facilities in earlier notices. One of the proposed exclusions will be addressed in a future notice. This notice addresses only the delisting petition for Eli Lilly and Company.

II. Disposition of Petition

Eli Lilly and Company, Clinton, Indiana

1. Proposed Exclusion

Eli Lilly and Company (ELC) petitioned the Agency to exclude from 40 CFR 261.31 its EPA Hazardous Waste Nos. F002, F003, and F005, consisting of

its incinerator scrubber effluent entering and contained in its on-site surface impoundment and its settled incinerator scrubber effluent solids contained in its surface impoundment and disposed in the solids retention area. ELC based its petition on the low concentrations of the listed constituents for these wastes. In the proposed rule, the Agency concluded that data submitted by ELC substantiate their claim that the listed constituents of concern are not present in the wastes above levels of regulatory concern. Furthermore, ELC submitted data on other non-listed hazardous constituents used in the manufacturing process which would be expected to be present in the petitioned wastes. An evaluation of these data indicated that no other hazardous constituents are present in these wastes at or above levels of regulatory concern. See 50 FR 48943, November 27, 1985, for a more detailed explanation of why EPA proposed to grant ELC's petition for these wastes.

2. Agency Response to Public Comments

One commenter stated that the Agency should deny this petition because the facility did not submit ground-water monitoring data. The commenter asserted that the Agency could not evaluate adequately the potential health and environmental hazard of the wastes without these data.

At the time that ELC submitted their petition, and at the time that the Agency proposed to exclude ELC's waste, EPA was not requesting petitioners to submit ground-water monitoring data as part of their petition. Additionally, once EPA began to request ground-water monitoring data (see below), EPA did not request ELC to submit ground-water monitoring data because of an enforcement consent agreement that ELC and the State of Indiana entered into on February 25, 1986. This consent agreement stated that if EPA granted an exclusion for certain hazardous wastes, ELC would not be required to comply with ground-water monitoring requirements. If the petition were denied, ELC would be required to install ground-water monitoring wells and submit closure and post-closure plans for the units handling the petitioned wastes. Under the agreement, no wells were to be installed until EPA made a decision on the delisting petition. Thus, the Agency has not required ELC to submit ground-water monitoring data.

The Agency's vertical and horizontal spread (VHS) model was used to predict the concentration of constituents from ELC's wastes in the ground-water at a hypothetical downgradient compliance point. See 50 FR 48896 (November 27,

1985). The VHS model considers the mobility of constituents from a specified volume of the petitioned waste. That evaluation indicated that no hazardous constituents would be present at the downgradient compliance point above levels of regulatory concern. EPA believes that the evaluation of data showing low total constituent concentrations of the constituents of concern, in this particular case, provide sufficient confidence of non-hazardousness even without ground-water monitoring data to allow a final determination to be made.

However, the Agency agrees with the commenter that ground-water monitoring data are additional, useful information to aid the evaluation of delisting petitions. Facilities petitioning for exclusion of a waste managed on-site are expected to be in compliance with the ground-water monitoring requirements of 40 CFR Part 264 or 265 and EPA generally requests them to submit, as part of their petition, four consecutive rounds of ground-water monitoring data from a monitoring system determined to be adequate under Subpart F of those regulations. These data are requested in order to assess the impact of past disposal of the petitioned waste on underlying ground water.

In this case, however, EPA has concluded that it is appropriate to grant the petition without reviewing ground-water monitoring data. ELC has informed EPA that it has not installed a ground-water monitoring system because the state of Indiana signed a consent agreement waiving ground-water monitoring requirements at the facility. In these circumstances, it is appropriate to rely on the VHS modeling evaluation to conclude that ELC's wastes will not threaten human health or the environment. This result is consistent with a small number of recent decisions to grant delisting petitions without ground-water monitoring data. In each of these cases, the facility had either qualified for a monitoring waiver under EPA's Subpart F regulations or obtained a waiver from a State agency or EPA Regional Office in a signed consent agreement. We believe it is inequitable to request monitoring data as part of the delisting evaluation where a regulatory agency has granted a waiver as part of a settlement of an enforcement claim. And it is unnecessary to obtain it where a facility has demonstrated, pursuant to 40 CFR 264.90 or 265.90, that monitoring is unnecessary because it is extremely unlikely that hazardous constituents will ever migrate to ground water. In all other circumstances, however, EPA

intends to continue to request ground-water monitoring data.

The commenter also stated that EPA should not make the proposed exclusion final until an appropriate methodology for evaluating the potential for ground-water contamination from surface impoundments is available.

The Agency believes that the commenter is generally correct in stating that the landfill model is not a perfect tool for evaluating the effects of impounded waste on the underlying aquifer. The Agency, however, does believe that the VHS model is the best model currently available in this case to evaluate the waste's potential effect on the underlying aquifer.

The Agency is currently developing a fate and transport model to evaluate the potential behavior of wastes managed in surface impoundments. However, this model is not ready for use in delisting evaluations, as it has not been fully documented and reviewed. When the Agency believes that the model is sufficiently developed for the purposes of delisting decision-making, it intends to announce the model's availability, describe its parameters and assumptions, and request comments on the model. Subsequent use of the model in the evaluation of specific delisting petitions would be proposed in the Federal Register in each instance, and comments on the appropriateness of such use would be requested and fully considered before promulgation of a final decision.

To delay petition evaluations until such time as other analytical tools (such as the surface impoundment model discussed above) are developed would result in curtailing the processing of many of the delisting petitions already submitted and does not seem equitable to those petitioners whose data were already evaluated and for whom, in some cases, proposed decisions were made, using the VHS landfill model.

In spite of this, EPA considered the key variations between landfill and surface impoundment scenarios. The primary difference between the VHS model and a surface impoundment model is expected to be the consideration in the impoundment model of hydraulic head, sorption and retardation, and clogging. Hydraulic head tends to force leachate into the aquifer, displacing ground water, resulting in potentially higher concentrations at the receptor well (*i.e.*, compliance point). Sorption and retardation of dissolved contaminants with the aquifer solids encountered through migration in the ground water tend to reduce the concentration of the

contaminant in the aquifer. Clogging occurs in surface impoundments when either fine material filters out in the impoundment bottom materials, or when fine material settles on the bottom of the impoundment. A potential result of clogging is the lowering of the hydraulic conductivity of the impoundment bottom material to that which approaches the hydraulic conductivity of clay, thus reducing the leakage of impoundment liquid into the aquifer.

To some extent, however, the mechanisms of sorption and retardation and clogging counteract hydraulic head as measured by the impact on ground water at a receptor well. Without completing ongoing model development efforts, it is difficult to predict what impact these competing mechanisms will have on the calculation of a predicted compliance-point concentration.

EPA believes that the VHS model is currently adequate to assess reasonable worst-case disposal of wastes at surface impoundments, because the VHS model is conservative in all of its assumptions. Specifically, the VHS landfill model does not account for the likely reduction in the total concentrations of hazardous constituents occurring through volatilization and degradation, thereby providing an additional margin of safety, regardless of whether the waste is disposed of in a landfill or surface impoundment scenario. For these reasons, the Agency believes that the application of the VHS model, in this case, adequately protects human health.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that both the incinerator scrubber effluent entering and contained in the on-site surface impoundment, and the settled incinerator scrubber effluent solids contained in the on-site surface impoundment and disposed in the retention area, are not hazardous and, as such, should be excluded from hazardous waste control.

In further confirmation of the Agency decision, EPA re-evaluated the organic constituents detected in ELC's incinerator scrubber effluent using the VHS model. This re-evaluation was performed because the Agency had applied the Organic Leachate Model (OLM) to the liquid phase; therefore, the Agency decided to recalculate new compliance-point concentrations for those constituents detected. See 50 FR 48943, November 27, 1985 and 51 FR 27061, July 29, 1986. (The OLM is used to predict the leachable portion of an organic constituent from a solid waste.

The Agency does not use the OLM to predict the leachable portion of an organic constituent from a liquid waste because EPA believes that the entire portion of a liquid waste is available for leaching. Therefore, it is unnecessary to use the OLM.) Table 1 presents the maximum total constituent concentrations of each of the detected constituents. Table 2 presents the results of the VHS model analysis. These results confirm the Agency's prior data demonstrating that the scrubber effluent is not hazardous.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS
[Scrubber Effluent]

Constituents	Scrubber effluent (ppm)
Benzene	¹ ND
Carbon tetrachloride	0.0007
Chloroform	0.0009
1,2-Dichloroethane	0.0003
Methylene chloride	0.122
Methyl ethyl ketone	0.215
Toluene	0.0175
1,1,1-Trichloroethane	0.0002
1,1,2-Trichloroethane	0.018
Trichlorofluoromethane	0.0001
Acetone	² 0.051
Bromodichloromethane	0.0011

ND: Not detected. Denotes concentrations below the following detection limit: benzene—0.0001.

¹ The Agency determined, using the Dixon extreme value test, that the maximum reported value of 0.009 ppm for benzene was a statistical outlier. This value, therefore, was not used in our analysis.

² The Agency determined, using the Dixon extreme value test, that the maximum reported value of 8.931 ppm for acetone was a statistical outlier. This value, therefore, was not used in our analysis.

As indicated in Table 2, the waste exhibited levels of the above organic constituents at the compliance point below levels used in delisting decision making. The Agency did not evaluate the mobility of benzene since it was not detected in the waste using the appropriate SW-846 test method.

TABLE 2.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS

Constituents	Compliance-point concentrations (ppm)	Levels of regulatory concern (ppm) ¹
Carbon tetrachloride	0.00011	0.005
Chloroform	0.00014	0.0005
1,2-Dichloroethane	0.000047	0.005
Methylene chloride	0.019	0.056
Methyl ethyl ketone	0.034	1.8
Toluene	0.0028	10.5
1,1,1-Trichloroethane	0.003	0.2
1,1,2-Trichloroethane	0.0028	0.0061
Trichlorofluoromethane	0.000015	10.5
Acetone	0.008	4.0
Bromodichloromethane	0.00017	0.02

¹ See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The Agency, as stated in 51 FR 27061 (July 29, 1986), did not use the OLM/VHS model to evaluate the retention area solids because, using the appropriate SW-846 test method, none of the polynuclear aromatic hydrocarbons (PNAHs) or other constituents (detected in the scrubber effluent) were detected. Therefore, the Agency did not evaluate the non-detected constituents in the OLM/VHS model.

In support of its petition, ELC submitted analytical data characterizing the incinerator scrubber effluent and the settled incinerator scrubber effluent solids disposed of in the retention area. ELC, however did not provide analytical data characterizing the settled incinerator scrubber solids contained in its on-site surface impoundment. As a result, ELC was requested to characterize the settled incinerator scrubber effluent solids to demonstrate that the solids were of similar composition to the retention areas solids.

On September 18, 1987, ELC submitted results obtained from a modified classical stirred tank model simulating the partitioning of constituents between water and solids. ELC's model was a "worst-case" model in that it used as inputs the maximum total constituent concentrations of the constituents detected in the scrubber effluent, while assuming conservation of mass, no volatilization, no biodegradation, and a total organic carbon (TOC) content of five percent (the maximum observed TOC level of ELC's waste was 3.8 percent (see 50 FR 48943, November 27, 1985)). Table 3 presents the predicted constituent concentrations or organic constituents in ELC's settled incinerator scrubber effluent solids contained in the surface impoundment. (The Agency limited its evaluation of the settled incinerator scrubber effluent to those constituents actually detected in the scrubber effluent entering the surface impoundment.)

TABLE 3.—Predicated Total Constituent Concentrations Settle Incinerator Scrubber Effluent Solids
[Contained in the On-Site Surface Impoundment]

Constituents	Total constituent concentrations (mg/kg)
Carbon tetrachloride	1.13x10 ⁻³
Chloroform	3.44x10 ⁻³
1,2-Dichloroethane	1.05x10 ⁻³
Methylene chloride	2.96x10 ⁻¹
Methyl ethyl ketone	7.36x10 ⁻¹
Toluene	5.70x10 ⁻¹
1,1,1-Trichloroethane	1.15x10 ⁻³
1,1,2-Trichloroethane	1.02x10 ⁻¹
Trichlorofluoromethane	1.27x10 ⁻³
Acetone	8.99x10 ⁻³
Bromodichloromethane	5.81x10 ⁻³

ELC attempted to use a mass-balance approach to model the total constituent concentration of the EP toxic metals, nickel, and cyanide in the settled incinerator scrubber effluent solids contained in the surface impoundment. The model used an experimentally derived retention factor (*i.e.*, the ratio of the concentrations of metals entering and leaving the surface impoundment). The Agency rejected ELC's model, however, because the retention factor was extremely sensitive, and any miscalculation of the smallest amount would cause the model to predict sufficient concentrations necessary to fail the VHS model analysis. EPA, therefore, requested ELC to collect representative samples of the settled incinerator scrubber effluent solids contained in the surface impoundment, and analyze for both the total constituent and EP toxicity concentrations of the EP toxic metals, nickel, and cyanide.

To collect representative samples from surface impoundments like ELC's, petitioners are normally requested to divide the unit into four quadrants and randomly collect five full-depth core samples from each quadrant. The five full-depth core samples are then composited (mixed) by quadrant to produce a total of four composite samples. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530-SW-85-003), April 1985.

On October 28, 1987, ELC collected a total of four composite samples of the settled incinerator scrubber effluent solids from its surface impoundment. The surface impoundment was divided into four sections and from each section, five full-depth core samples were randomly collected. The five full-depth core samples were composited by section.

ELC use SW-846 method numbers 3010, 3020, 6010, 7421, and 7470 to quantify the total constituent concentrations of the EP toxic metals and nickel, and SW-846 method number 1310 to quantify the EP leachable concentrations of the EP toxic metals and nickel in the settled incinerator scrubber solids contained in the surface impoundment. Additionally, ELC used EPA method number 335.2 to quantify the total constituent concentration of cyanide. See "Methods for Chemical Analysis of Water and Wastes," EPA/4-79-020. Table 4 presents the maximum total constituent and EP leachate concentrations of the EP toxic metals, nickel, and cyanide.

TABLE 4.—MAXIMUM TOTAL CONSTITUENT AND EP LEACHATE CONCENTRATIONS SETTLED INCINERATOR SCRUBBER EFFLUENT SOLIDS

[Contained in the Surface Impoundment]

Constituents	Total constituent concentrations (mg/kg)	EP leachate concentrations (mg/l)
Arsenic.....	29.0	<0.098
Barium.....	1390.0	0.319
Cadmium.....	27.0	0.012
Chromium.....	350.0	<0.012
Lead.....	360.0	<0.045
Mercury.....	2.7	<0.015
Nickel.....	160.0	0.22
Selenium.....	5.0	<0.11
Silver.....	<20.0	<0.014
Cyanide.....	<0.5	<0.025

<: Denotes that the actual value is below the detection limit specified in the table.

¹ Leachable cyanide tests were not performed. However, leachable cyanide was determined by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

The Agency evaluated the mobility of the inorganic constituents from ELC's waste using the VHS model. The results of the Agency's evaluation, using the waste volume of 160 cubic yards (the amount claimed by ELC to be in the surface impoundment) and the maximum EP leachate concentrations of the hazardous inorganic constituents of concern in the VHS model, are shown in Table 5. The Agency did not evaluate the mobility of arsenic, chromium, lead, mercury, selenium, silver, or cyanide from ELC's waste because they were not detected in the EP extract (see Table 4). If a constituent is not detected when using the appropriate SW-846 method, the Agency assumes that the constituent is not present.

TABLE 5.—VHS MODEL: PREDICTED COMPLIANCE-POINT CONCENTRATIONS SETTLED INCINERATOR SCRUBBER EFFLUENT SOLIDS

[Contained in the Surface Impoundment]

Constituents	Compliance-point concentrations (ppm)	Levels of regulatory concern (ppm) ¹
Barium.....	0.01	1.0
Cadmium.....	0.0004	0.01
Nickel.....	0.007	0.5

¹ See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The settled incinerator scrubber effluent solids exhibited barium, cadmium, and nickel levels at the compliance point below the levels used in delisting decision making.

The Agency calculated the mobile portion of the total constituent

concentrations of the organics (detected in the scrubber effluent) in the settled incinerator scrubber effluent solids using the OLM. See 51 FR 41084, November 13, 1986. The leachable concentrations of the detected organic constituents were then evaluated using the VHS model. Table 6 presents the results of the OLM/VHS model analysis.

As indicated by Table 6, none of the organic constituents exhibited compliance-point concentrations at levels exceeding the health-based levels. The Agency was unable to evaluate the mobility of bromodichloromethane since a value for solubility was not available. As a matter of policy, where a compliance-point concentration cannot be calculated, EPA will not evaluate that particular constituent.

TABLE 6.—OLM/VHS MODEL: PREDICTED COMPLIANCE-POINT CONCENTRATIONS SETTLED INCINERATOR SCRUBBER EFFLUENT SOLIDS

[Contained in the Surface Impoundment]

Constituents	Compliance-point concentrations (ppm)	Levels of regulatory concern (ppm) ¹
Carbon tetrachloride.....	3.78×10^{-5}	5.0×10^{-3}
Chloroform.....	4.02×10^{-5}	5.0×10^{-4}
1,2-Dichloroethane.....	1.83×10^{-5}	5.0×10^{-3}
Methylene chloride.....	1.15×10^{-3}	5.64×10^{-3}
Methyl ethyl ketone.....	5.63×10^{-3}	1.8
Toluene.....	4.65×10^{-4}	10.5
1,1,1-Trichloroethane.....	1.02×10^{-3}	2.00×10^{-3}
1,1,2-Trichloroethane.....	3.20×10^{-4}	6.10×10^{-3}
Trichlorofluoromethane.....	1.00×10^{-3}	10.5
Acetone.....	2.21×10^{-3}	4.0
Bromodichloromethane.....	NC ²	2.00×10^{-3}

¹ See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

² Not calculated due to the lack of a value for solubility.

Additionally, although ELC did not test the settled incinerator scrubber effluent solids contained in the surface impoundment for the characteristics of ignitability, corrosivity, and reactivity, the Agency believes that the characteristics testing previously performed on the settled incinerator scrubber solids stored in the retention area can be used to demonstrate that the settled solids contained in the surface impoundment do not exhibit the characteristics of ignitability, corrosivity, and reactivity. The retention area solids are the same waste, except for solids content (*i.e.*, the settled sludge contained in the surface impoundment has a higher percent solids content). The characteristics testing performed on the settled solids disposed in the retention area, by inference, indicates that the settled solids contained in the surface impoundment do not exhibit the

characteristics of ignitability, corrosivity, and reactivity.

The Agency, therefore, is granting a final exclusion to Eli Lilly and company for both its incinerator scrubber effluent entering and contained in its on-site surface impoundment, and the incinerator scrubber effluent solids contained in its on-site surface impoundment and disposed of in the solids retention area. These wastes result from the incineration of waste solvents. These wastes are listed as EPA Hazardous Waste Nos. F002, F003, and F005, and are generated at ELC's Clinton, Indiana facility. The exclusion remains in effect unless the wastes vary from those originally described in the petition (*i.e.*, the wastes are altered as a result of changes in the manufacturing or treatment process). The facility would require a new exclusion if its manufacturing or treatment processes are altered, and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, under the

Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA, regulatory requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal and State programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: August 10, 1988.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Eli Lilly and Company.	Clinton, Indiana	Incinerator scrubber liquids, entering and contained in their on-site surface impoundment, and solids settling from these liquids originating from the burning of spent solvents (EPA Hazardous Waste Nos. F002, F003, and F005) contained in their on-site surface impoundment and solids retention area on August 18, 1988 and any new incinerator scrubber liquids and settled solids generated in the surface impoundment and disposed of in the retention area after August 18, 1988.

[FR Doc. 88-18732 Filed 8-17-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 498

[BERC-371-F]

Medicaid Program; Appeals From Cancellation of Approval of Medicaid Long-Term Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule corrects an oversight by setting forth time limits for new issues that may be considered by an Administrative Law Judge (ALJ) during a hearing afforded a Medicaid skilled nursing facility (SNF) or intermediate care facility (ICF) because the Secretary proposes to cancel its approval under section 1910(c)(1) of the Social Security Act (the Act).

This amendment is necessary because current rules do not take account of the fact that hearings under section 1910(c) of the Act (unlike Medicare hearings) may take place *before* the cancellation is put into effect.

The purpose is to establish time limits appropriate to section 1910(c) situations.

DATE: This rule is effective September 19, 1988.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add to table 1 the following wastestreams in alphabetical order:

FOR FURTHER INFORMATION CONTACT: Pete Burdette, (301) 966-6772.

SUPPLEMENTARY INFORMATION:

Background

Final regulations with comment period, published on June 12, 1987 at 52 FR 22444, had a dual purpose:

- To update and clarify the rules on appeals from determinations that affect the participation of providers, suppliers, and practitioners in the Medicare program; and

- To redesignate those rules (previously in Subpart O of Part 405 of the Medicare rules) as a new Part 498.

As part of the updating process, we made those Medicare regulations applicable to situations in which, under section 1910(c) of the Act, the Secretary proposes to cancel the approval of a Medicaid SNF or ICF. As explained in the preamble to the June 12 rules, this is appropriate because—

- The appeals procedures in Part 498 are based on sections 205(b) and 205(g) of the Act; and

- Section 1910(c) of the Act gives the Medicaid facility affected by a proposed cancellation under that section the right to hearing and to judicial review under sections 205(b) and 205(g) of the Act.

As a means of limiting the scope of the hearing to matters directly relevant to the determination that is being appealed, § 498.56 retains the time limits (previously set forth in § 405.1542) for new issues that may be considered by the ALJ. For terminations, it provides that the ALJ may not consider any issues that arise after "the effective date

of the termination of a provider agreement".

Comments

We received two comments on the June 12 publication. One was from a law firm, recommending substantive changes in the hearings procedures and in the availability of case decisions, indices, and pleadings. These comments will be considered in developing a Notice of Proposed Rulemaking (NPRM) that will amend Part 498 to make substantive changes that could not be made by the June 12 rules for which NPRM was waived.

The other comment pointed out that the time-limit established by § 498.56(b)(1) for new issues was not appropriate for appeals under section 1910(c) of the Act.

Discussion

There is an important difference between HCFA's termination of a Medicare provider agreement and a proposal by the Secretary to cancel the approval of a Medicaid SNF or ICF under section 1910(c) of the Act. The hearing for a Medicare facility is always provided after the termination goes into effect. However, for the Medicaid facility, except when its deficiencies pose immediate and serious threat to patient health and safety, the Medicaid provider agreement remains in effect—

- Until the period for requesting a hearing has expired; or
- If a hearing is requested and granted, until the Secretary reaches a final decision after the hearing.

In developing the June 12 rules, we overlooked the need for a separate cut-off date for "pre-cancellation" hearings. The current Medicare rule (§ 498.56(b)(1)), if applied to such hearings, would make it difficult to reach a final decision within a reasonable period of time. A Medicaid facility could raise a "new issue"—that it had corrected all deficiencies after the section 1910(c) survey—and request resurvey. By repeatedly reporting compliance and requesting resurvey, the facility could prolong the appeals process indefinitely. Since the provider agreement could not be terminated until the ALJ issued a decision, the facility would continue to receive Medicaid payment—for new admissions as well as for previously admitted residents—and continue to pose a potential threat to the health and safety of all residents. We do not believe that this furthers the goals and objectives of the Medicaid program.

Since the issue before the ALJ is whether the Secretary properly determined that the facility's participation in the program ought to be

terminated, and since participating facilities are required to be continuously in compliance with the conditions of participation for SNFs or the standards for payment to ICFs, the appropriate cut-off date for a pre-cancellation hearing is the completion date of the survey or resurvey that is the basis for the proposed cancellation of approval.

When the deficiencies of a Medicaid facility pose immediate and serious threat to patient health and safety, approval is cancelled without waiting for a hearing. In that situation, the appropriate cut-off date for new issues is the effective date of cancellation.

Response to Comment

This rule makes a single change responsive to the second comment received regarding the final regulations published on June 12, 1987 (52 FR 22444). In § 498.56, we have added a new paragraph (b)(5) to provide separate time limits for new issues that may be considered by the ALJ at a hearing under section 1910(c) of the Act. In the case of a pre-cancellation hearing, the cut-off date is the completion date of the survey or resurvey that was the basis for the Secretary to propose cancellation of the approval of the Medicaid SNF or ICF. In an immediate and serious threat situation, the cut-off date is the effective date of cancellation of approval.

Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulation that is likely to have an annual impact of \$100 million or more, cause a major increase in costs or prices, or meet other thresholds specified in section 1(b) of the order.

We have determined that a regulatory impact analysis is not required for these rules because this minor change will have very slight budgetary impact.

Section 1102(b) of the Act requires a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals, that is, hospitals that are located outside a metropolitan statistical area and have fewer than 50 beds.

In addition, we generally prepare an initial Regulatory Flexibility Analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 602) unless the Secretary certifies that the regulation would not have a "significant economic impact on a substantial number of small entities". A small entity is defined as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We also consider all providers and suppliers as small entities.

We have determined, and the Secretary certifies, that this rule will not have a significant economic impact on a substantial number of small entities or on the operation of a substantial number of small rural hospitals.

Paperwork Reduction Act

This rule contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 42 CFR Part 498

Administrative practice and procedure, Appeals, Medicare practitioners, Providers and suppliers, Medicaid, Nursing homes.

42 CFR Part 498 is amended as set forth below:

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM

1. The authority citation continues to read as follows:

Authority: Secs. 205(a), 1102, 1869(c), 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395ff(c), 1395hh, and 1395ii) unless otherwise noted.)

2. In § 498.56 paragraph (a)(1) and the introductory text of paragraph (b) are republished for the reader's convenience, and paragraph (b)(5) is added to read as follows:

§ 498.56 Hearing on new issues.

(a) *Basic rules.* (1) Within the time limits specified in paragraph (b) of this section, the ALJ may, at the request of either party, or on his or her own motion, provide a hearing on new issues that impinge on the rights of the affected party.

(b) *Time limits.* The ALJ will not consider any issue that arose on or after the following dates:

(5) With respect to Medicaid SNFs or ICFs surveyed under section 1910(c) of the Act—

(i) The completion date of the survey or resurvey that is the basis for a proposed cancellation of approval; or

(ii) If approval was cancelled before the hearings, because of immediate and serious threat to patient health and safety, the effective date of cancellation.

(Catalog of Federal Domestic Assistance Programs No. 13.714, Medical Assistance Programs)

Dated: April 12, 1988.

William L. Roper,
Administrator, Health Care Financing
Administration.

Approved June 6, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-18703 Filed 8-17-88; 8:45 am]

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1160

Regulations Under Section 206(b) of the Museum Services Act

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final regulations.

SUMMARY: The Institute of Museum Services issues final regulations under section 206(b) of the Museum Services Act relating to the award of contracts and cooperative agreements to professional museum organizations. The fiscal year 1988 appropriation statute for IMS provides the necessary appropriations act authority to implement this section. IMS is issuing regulations under this authority to assist applicants and recipients and to make the most effective use of available funds.

EFFECTIVE DATE: August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Director of Programs, Institute of Museum Services, Room 609, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202-786-0539).

SUPPLEMENTARY INFORMATION:

1. General Background

The Museum Services Act ("the Act"), which is Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, was enacted on October 3, 1976 and has been subsequently amended and extended.

The purpose of the Act is stated in section 202, 20 U.S.C. 961, as follows:

It is the purpose of [the Museum Services Act] to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and postsecondary education and with programs of nonformal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage; and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Service (Board) and a Director. IMS is an independent agency

placed under the statutory heading of the National Foundation on the Arts and the Humanities (National Foundation).

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public, and providing educational programs to the public. During fiscal year 1988, IMS provides three types of grant assistance to museums: (1) General operating support; (2) conservation assistance; and (3) museum assessment assistance. This regulation covers a fourth type of support: contracts and cooperative agreements with professional museum associations to provide services.

2. Purpose and Scope of Regulations

Section 206(b) of the Museum Service Act, 20 U.S.C. 965(b), provides for financial assistance to professional museum organizations. Section 206(b) states:

The Director [of IMS], subject to the policy direction of the National Museum Services Board, is authorized to enter into contracts and cooperative agreements with professional museum organizations to provide financial assistance to such organizations in order to enable such organizations to undertake projects designed to strengthen museum services, except that any contracts of cooperative agreements entered into pursuant to this subsection shall be effective only to such extent or in such amounts as are provided in appropriations Acts.

Language in the fiscal year 1988 appropriation for IMS (Pub. L. No. 100-203) contains the necessary appropriations act authority to implement this section. IMS had no regulations or guidelines governing applications for such assistance or postaward conditions. Therefore, after receiving the policy direction of the Board, IMS issued, on February 5, 1988, proposed regulations for public comment.

The proposed regulations closely track section 206(b) with respect to those matters for which there is statutory language. They include provisions regarding eligibility, applications, activities for which assistance will be made available, and conditions for receipt of funds.

Section 1180.77 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Institute of Museum Services will submit a copy of these requirements to the Office of Management and Budget (OMB) for its review. Organizations and

individuals desiring to submit comments on these requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 30002, New Executive Office Building, Washington, DC 20503; Attn: Jim Houser.

3. Response to Comments

A. General

A number of comments were received in response to the February 5 notice of proposed rulemaking. The following paragraphs summarize these comments and the IMS response. All of the comments have been carefully studied by IMS and National Museum Services Board.

In general, commenters expressed approval of the regulations and of the manner in which IMS proposes to administer the program. Specific suggestions for improvement or clarification fall into two categories:

- Comments regarding provisions of the proposed regulations that repeat or reflect statutory requirements.
- Comments concerning provisions that were not required by statute, but which were developed by IMS to ensure effective program administration or clarify statutory requirements.

B. Regulations Governed by Statutory Provisions

IMS may not change regulatory provisions based upon the governing statute. Such comments are identified, summarized, and discussed below:

(1) *Eligibility status of public agencies and organizations.* A number of commenters expressed concern that the regulations did not permit public museum agencies or organizations to apply for assistance. The proposed regulations contained the following definition of the term "professional museum organization":

For the purpose of this subpart, the term "professional museum organization" means a private, nonprofit professional museum services-related organization, institution, or association which engages in activities designed to advance the well-being of museums eligible for assistance under this part and the museum profession * * *

This definition was taken from section 206(b)(4) of the Museum Services Act, 20 U.S.C. 965(b)(4), which provides:

For purposes of this subsection, the term "professional museum organization" means a private, nonprofit professional museum-related organization, institution, or association which engages in activities

designed to advance the well-being of museums and the museum profession.

The governing statute thus limits eligibility to private nonprofit organizations. Professional museum organizations that are governmental entities are not eligible. However, private organizations that operate on a regional or state-wide basis, or that serve museums or categories of museums of a particular state, are eligible. See § 1180.77(d)(2) of the regulations. In view of the applicable statutory provisions, no change has been made in the text of the regulations.

(2) *Prohibition of use of funds for general operating support for professional museum organizations.* A number of commenters thought that general operating support should be available to professional museum organizations under the program. The proposed regulations stated:

No financial assistance may be provided under this subpart to pay for the operational expenses of any professional museum organization.

This provision repeats section 206(b)(2) of the Museum Services Act, 20 U.S.C. 965(b)(2)(B). It is consistent with the purpose of the program to assist projects or activities of professional museum organizations designed to strengthen museum services. Because the regulatory provision is based upon a statutory limitation, no change can be made in the regulations.

(3) *One-year duration for projects.* A number of commenters expressed concern that the one-year limitation on the duration of projects assisted under the program would be too confining. This limitation is contained in § 1180.77(1) of the regulations. It reflects a statutory limitation in section 206(b)(2)(A) of the statute, 20 U.S.C. 965(b)(2)(A), which provides:

No financial assistance may be provided under this subsection for any project for a period in excess of one year.

Again, IMS is bound by the statutory limitations governing this program. See below for a discussion of the definition of the one year period.

(4) *Breadth of definition of "professional museum organization."* A number of commenters objected to the breadth of the definition of "professional museum organization." They were concerned that organizations might receive assistance that did not have as their purpose the strengthening of museum services for a broad range of museums. For example, an organization devoted to the financial improvement of one museum might be eligible. Dilution of the impact of a program with limited

funds was a concern of these commenters.

In defining the term "professional museum organization," IMS followed the statutory language but included some clarifying language to target organizations that engage in activities to advance the well-being of museums (defined as eligible under the Act) and the museum profession. Such activities include technical assistance, dissemination of information, professional development, and professional services. In addition, IMS included funding criteria in § 1180.77(k) to further achieve this targeting. These criteria emphasize strengthening museum services and project quality. IMS believes this definition to be consistent with the statute. IMS will monitor the administration of the program to ensure that the funding criteria are adequate to carry out the statutory purpose. At this time, a change in the regulations does not appear to be necessary or appropriate.

(5) *Limitation on funds available under the program for fiscal year 1988.* A number of commenters objected to the limitation of \$100,000 on the funds available for fiscal year 1988, set forth in § 1180.77(g) of the regulations. The limitation is based on the language in section 206(b) of the statute that authorizes funding only to the extent provided in appropriations acts. The FY 1988 appropriation act (Pub. L. No. 100-203) provides * * * "\$100,000 as authorized by 20 U.S.C. 965(b)." The funding level reflects a statutory limitation not subject to change by IMS in regulations.

Upon further review, IMS determined that it is not necessary to mention the \$100,000 level in the regulation. These regulations are designed to cover more than one year, and appropriations may vary from year-to-year. Each year's appropriation level will be publicized when applications are made available. Relevant clarifying language has been provided in the regulation.

(6) *Matching.* A number of commenters called for greater flexibility in the matching requirement contained in § 1180.77(h) of the regulations. This regulatory provision is based upon section 206(c) of the Museum Services Act which provides:

Grants, contracts, and cooperative agreements under this section for any fiscal year may not exceed 50 per centum of the cost of the program for which the grant or financial assistance is made, except that no more than 20 per centum of the funds available under this section for any fiscal year may be available for grants or financial assistance in such a fiscal year without regard to such limitation.

The regulatory provision gives flexibility to IMS in applying the matching requirements. The last sentence of the regulatory provision provides:

In exceptional circumstances applicable to a particular applicant, the Director, upon consultation with the Board, may waive the matching requirement pursuant to section 206(c) of the Act.

C. Comments on Other Provisions

(1) *Single application from an organization.* A number of commenters objected to following requirement contained in the proposed regulations:

An applicant may submit only one application with respect to each deadline.

In view of the limited purpose of the program and the limited funds available, IMS believes that this provision will promote the effective administration of the program.

(2) *Documentation of needs.* A number of commenters called for more documentation of needs by organizations applying for assistance. Section 1180.77(k)(3) of the proposed regulations makes such documentation a factor in application review. IMS believes that this provision is responsive to the comment. Applicants can be expected to respond to it in preparing their applications. IMS will review the need for more explicit language once the program is implemented.

(3) *Clarification regarding award amount.* One commenter called for clarification of the description of the amount which an applicant might expect to receive. The proposed regulations were designed in § 1180.77(g) to indicate that, while the upward limit on the program was \$100,000, IMS expected to award contracts or cooperative agreements of no more than \$50,000 to a single organization. The provision was intended to guide applicants in developing their applications.

Upon review, IMS determined that it is not necessary to mention award limits in the regulations. Award amounts may fluctuate from year-to-year, due to changes in the total appropriation and in the types of projects funded. Guidance on probable award amounts will be provided in each year's application materials. Relevant clarifying language has been provided in the regulation.

(4) *Commencement of one-year duration period.* A number of commenters expressed the view that the one year project period should begin with the date of the award. IMS agrees and has made a clarifying change to the application guidelines and regulations.

(5) *Technical changes.* A technical change has been made in § 1180.77(d), by the addition of a new subparagraph (3), in order to ensure that assistance is not made available under the professional museum organization program to organizations that could qualify for assistance under other programs administered by IMS for which museums are eligible. The Institute believes that this clarification is needed in order to be certain that the program is carried out in accord with its legislative intent, to enhance museum services by assisting organizations that were comprised of museums or museum professionals but were otherwise ineligible for assistance under the Act because they were not themselves museums.

Other editorial and non-substantive technical changes have been made.

(6) *Executive Order 12291.* These regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

(7) *Regulatory Flexibility Act Certification.* The Director certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

To the extent that these proposed regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered under the Regulatory Flexibility Act.

These regulations will affect certain organizations receiving Federal financial assistance under the Museum Services Act. However, they will not have a significant economic impact on the small entities affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision.

List of Subjects in 45 CFR Part 1180

Museums, National boards.

Dated: August 10, 1988.

PART 1180—[AMENDED]

1. The authority citation for 45 CFR Part 1180 continues to read as follows:

Authority: 20 U.S.C. 961 *et seq.*

Part 1180 of Title 45 CFR is amended by adding a new Subpart E consisting of § 1180.77 to read as follows:

Subpart E—Assistance To Professional Museum Organizations

§ 1180.77 Contracts and cooperative agreements with professional museum organizations.

(a) *Scope.* The guidelines and standards in this section apply to all aspects of the Institute's program to provide financial assistance, through contracts and cooperative agreements, to professional museum organizations for the carrying out of certain projects pursuant to section 206(b) of the Act.

(b) *Definitions.* For the purposes of this subpart, the term "professional museum organization" means a private, non-profit professional museum services-related organization, institution, or association which engages in activities designed to advance the well-being of museums eligible for assistance under this part and the museum profession through such activities as technical assistance, dissemination of information, professional development activities, and professional services.

(c) *Applicability of other regulations.* The following IMS regulations apply to assistance under this subpart:

- (1) Section 1180.3; § 1180.4; and § 1180.5(e) of Subpart A and
- (2) Sections 1180.30–1180.33 and §§ 1180.36–1180.39 of Subpart B; and
- (3) Section 1180.44, § 1180.46 and §§ 1180.51–1180.59 of Subpart C.

(d) *Applicants.* (1) A professional museum organization may apply for assistance through a contract or cooperative agreement under this subpart.

(2) A professional museum organization that serves museums or museum professionals at the national, regional, state, or local level may apply.

(3) An entity eligible for assistance under other subparts of this Part 1180 may not apply.

(e) *Types of projects.* The Institute considers applications under this subpart to carry out projects designed to strengthen museum services such as:

- (1) Programs to educate professionals in improved or innovative standards of museum operations or other matters relating to museum management;
- (2) Research or surveys to determine effective and innovative methods to provide museum services or conduct operations;
- (3) Projects to investigate the feasibility of cooperative methods for the carrying out by museums of management, storage, and information gathering and sharing, or other museum functions; or

(4) Research projects to help museums and museum associations serve their publics more effectively.

(f) *Limitation.* No financial assistance may be provided under this subpart to pay for the operational expenses of any professional museum organization.

(g) *Amount of contract or cooperative agreement.* The amount of contracts or cooperative agreements shall be subject to the availability of appropriations. Guidance on probable award ranges will be provided with application materials each year.

(h) *Matching.* A contract or cooperative agreement under this subpart for any fiscal year may not normally exceed 50 per centum of the cost of the project for which the contract or cooperative agreement is made. In exceptional circumstances applicable to a particular applicant, the Director, upon consultation with the Board, may waive this requirement pursuant to section 206(c) of the Act.

(i) *Application requirements.* (1) An applicant under this subpart must submit an application in such time and such manner, and containing such information, as requested by the Institute.

(2) An applicant must submit with its application its financial statements for the two most recent fiscal years for which information is available. For applications requesting in excess of \$20,000, the Institute requests that one of those statements be audited.

(j) *Procedures for review of applications.* To evaluate applications and determine the amount of their awards, the Institute rates competitive applications under the applicable criteria stated in paragraph (k). Normally, these applications are evaluated by field reviewers, panels of experts, or both. The Director may also use technical experts in the review of applications. Final determinations as to the award of contracts or cooperative agreements are made by the Director after consultation with the Board with respect to policy matters.

(k) *Criteria.* This paragraph sets forth the criteria that the Institute uses in evaluating and reviewing applications for contracts or cooperative agreements under this subpart. Panelists and field reviewers are instructed to use only these criteria in the evaluation and review of these applications:

- (1) To what extent is the project likely to strengthen museum services?
- (2) To what extent does the project hold promise of exploring or developing effective and innovative solutions to problems affecting the provision of museum services or operations?

(3) Has the need for the project been adequately documented?

(4) What is the quality of the project design?

(5) Does the project have an adequate budget to achieve its purpose?

(6) What are the qualifications of the personnel the applicant plans to utilize in the project?

(7) What are the anticipated long-term benefits of the project?

(l) *Duration.* No financial assistance may be provided under this subpart for any project for a period in excess of one year. The one year period begins with the date that the project is scheduled to commence under the applicable contract or cooperative agreement.

(m) *Limitation on number of applications.* An applicant may submit only one application with respect to each deadline.

Lois Burke Shepard,

Director, Institute of Museum Services.

(Catalogue of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

(20 U.S.C. Sec. 961-68)

[FR Doc. 88-18558 Filed 8-17-88; 8:45 am]

BILLING CODE 7030-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-302; RM-5698]

Radio Broadcasting Services; Palm Springs, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 263B1 for Channel 265A at Palm Springs, California, and modifies the Class A license of KPSI Radio Corporation for Station KPSI(FM), as requested, to specify operation on the higher class channel, thereby providing that community with an additional wide coverage area FM service. Reference coordinates for Channel 263B1 at Palm Springs are 33-56-53 and 116-24-31. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-302, adopted July 8, 1988, and released August 11, 1988. The full text of this

Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM allotments for California, in the entry for Palm Springs is amended by removing Channel 265A and adding Channel 263B1.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-18755 Filed 8-17-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-376; RM-5839 and RM-6154]

Radio Broadcasting Services; Dalton and Rockmart, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 283A to Dalton, Georgia as a first FM service, at the request of Calvin R. Means, at coordinates 34-46-51 and 84-53-30. Additionally, in response to a counterproposal filed in this proceeding, Channel 296C2 is substituted for Channel 296A at Rockmart, Georgia, and the license for Station WZOT(FM) modified accordingly, at the request of the licensee, Broadcast Investment Associates, Inc. Coordinates for Channel 296C2 are 34-14-47 and 84-59-18. With this action, this proceeding is terminated.

DATES: Effective September 23, 1988; the window period for filing applications on Channel 283A at Dalton will open on September 26, 1988, and close on October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-376, adopted July 12, 1988, and released August 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Georgia (1) Channel 283A is added at Dalton, and (2) Channel 296C2 is added at Rockmart, and Channel 296A removed.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-18756 Filed 8-17-88; 8:45 a.m.]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-50; RM-6105]

Radio Broadcasting Services Ontonagon, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 266C2 to Ontonagon, Michigan, and modifies the license of Station WONT(FM), Channel 252A, to specify operation on Channel 266C2. This action is taken in response to a petition filed by Ontonagon County Broadcasting, Inc., licensee of Station WONT(FM). Comments were filed by the petitioner. No other comments were received. Canadian concurrence has been obtained for the allotment of Channel 266C2 at Ontonagon. The coordinates for Channel 266C2 are 46-44-49 and 89-11-27. With this action, this proceeding is terminated.

DATES: Effective September 23, 1988.

FOR FURTHER INFORMATION CONTACT:
Kathleen Scheuerle, Mass Media
Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-50, adopted July 12, 1988, and released August 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended in the entry of Ontonagon, Michigan, by removing Channel 252A and adding Channel 266C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-18757 Filed 8-17-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-79; RM-6058]

Radio Broadcasting Services; Iuka, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 285C2 for Channel 285A at Iuka, Mississippi, in response to a petition filed by Segars Communications, Inc. In accordance with § 1.420(g) of the Commission's Rules, we have also modified the license for Station WTIB, Iuka, to specify operation on Channel 285C2 in lieu of Channel 285A, with a site restriction 8.8 kilometers northwest of the community. The coordinates used for Channel 285C2 are 34-50-17 and 88-16-56. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 23, 1988.

FOR FURTHER INFORMATION CONTACT:
Kathleen Scheuerle, Mass Media
Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-79, adopted July 12, 1988, and released August 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Mississippi is amended by deleting Channel 285A and adding Channel 285C2 at Iuka.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-18758 Filed 8-17-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-347; RM-5891]

Radio Broadcasting Services; Bastrop and Burnet, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C2 for Channel 296A at Bastrop, Texas, and modifies the license of Station KSSR(FM) to specify operation on the new frequency, at the request of Central Texas Broadcasters, Inc., as that community's first wide coverage area FM service. The petitioner's proposed site is located 22.9 kilometers (14.2 miles) west of the community, at coordinates 30-02-30 and 97-32-12. This action also substitutes Channel 295A for Channel 296A at Burnet, Texas and modifies the license of Station KHLB-FM to specify operation accordingly, in order to accomplish the Bastrop substitution. Channel 295A at Burnet requires a site

restriction of 6.7 kilometers (4.2 miles) west of that community, at coordinates 30-44-15 and 98-17-39. Mexican concurrence has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT:
Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-347, adopted June 20, 1988, and released August 11, 1988. This full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by removing Channel 296A and adding Channel 296C2 for Bastrop; and removing Channel 296A and adding Channel 295A for Burnet.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-18759 Filed 8-17-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-258; RM-5796]

Radio Broadcasting Services; New London and Merrill, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228C2 for Channel 228A at New London, Wisconsin and modifies the license of Station WNBK(FM) to specify operation on the higher class co-channel, as requested by Goetz Communications Corporation. This document also substitutes Channel 281A for Channel 228A at Merrill, Wisconsin and modifies the license of Station

WMZK(FM) to specify operation on the new frequency in order to accommodate the New London substitution. Channel 228C2 at New London requires a site restriction of 17 kilometers (10.6 miles) northeast of the community. The proposed site coordinates are 44-30-51 and 88-36-53. Canadian government has concurred to the channel changes at Merrill. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-258, adopted July 8, 1988, and released August 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended, under Wisconsin, adding Channel 281A and removing Channel 228A under Merrill; and by adding Channel 228C2 and removing Channel 228A under New London.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-18760 Filed 8-17-88; 8:45 am]

BILLING CODE 5712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1150

[Ex Parte No. 392; Sub-No. 1]

Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; modification of existing rules.

SUMMARY: The Commission is clarifying its regulations governing certain exempt acquisitions and operations under 49 U.S.C. 10901 by modifying 49 CFR Part 1150 to reflect the fact that only shippers located on the transferred line must be served with an applicant's notice of intent to file a notice of exemption. This should eliminate any confusion as to which shippers must be notified of a change in ownership and operation.

DATE: This action will be effective August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

(TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: In Ex parte No. 392 (Sub-No. 1), *Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 4 I.C.C.2d 309, served February 29, 1988, we adopted revised rules at 49 CFR Part 1150, Subpart D, governing certain exempt acquisitions and operations under 49 U.S.C. 10901. Specifically, to provide affected parties in "larger" transactions with increased notice and information, we adopted revised rules establishing a separate procedure to be used in transactions creating new Class I and II rail carriers. The new procedure includes a pre-filing period of at least 14 days initiated by applicant's service on specified parties, including certain shippers on the line, of a notice of intent to file a notice of exemption, a post-filing period of at least 21 days, and expanded data requirements. The rules were published in the *Federal Register* on February 29, 1988 at 53 FR 5981 and became effective on March 30, 1988.

By separate decision, we are denying a petition filed by Patrick W. Simmons, Illinois Legislative Director for United Transportation Union, seeking reopening of our prior decision for further revision of the rules. However, with regard to the issue raised by Mr. Simmons as to which shippers using the line must be served with the notice of intent, we are clarifying our rules at 49 CFR 1150.35(c)(4) to make clear that only shippers or receivers of freight actually located on the line must be served with the notice of intent. To eliminate any confusion regarding notice to shippers, the Commission is now revising that regulation in the manner described below.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC metropolitan area), (assistance for the hearing

impaired is available through TTD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

This action does not affect significantly the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1150

Administrative practice and procedure, Railroads.

This action is taken under the authority of 49 U.S.C. 10321, 10901 and 10505, and 5 U.S.C. 553 and 559

Decided: August 1, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioners Simmons and Lamboley dissented with separate expressions.

Noreta R. McGee,
Secretary.

Title 49 of the Code of Federal Regulations Part 1150 is amended as follows:

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE OR OPERATE RAILROAD LINES

1. The authority citation for 49 CFR Part 1150 continues to read as follows:

Authority: 49 U.S.C. 10321, 10901 and 10505; 5 U.S.C. 553 and 559.

2. Section 1150.35 is amended by revising paragraph (c)(4) to read as follows:

§ 1150.35 Procedures and relevant dates—transactions that involve creation of Class I or Class II carriers.

* * * * *

(c) * * *

(4) Shippers representing at least 50 percent of the volume of local traffic and traffic originating or terminating on the line(s) in the most recent 12 months for which data is available (beginning with the largest shipper and working down).

* * * * *

[FR Doc. 88-18717 filed 8-17-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: This notice makes available to the public the Record of Decision (ROD) on the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds. The ROD was prepared in accordance with National Environmental Policy Act (Council on Environmental Quality) regulations, 40 CFR 1505.2. The ROD results from recommendations of the Fish and Wildlife Service (Service) to the Assistant Secretary for Fish and Wildlife and Parks, Department of Interior, regarding a general approach to issuance of annual regulations permitting the sport hunting of migratory birds. This action results from discharge of responsibilities delegated by the Secretary of the Interior to the Service Director to protect and enhance migratory bird populations under The Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*; 40 Stat. 755). The ROD is based primarily on information contained in The Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88). This document was filed with the Environmental Protection Agency on June 9, 1988, and announced by them on June 17, 1988, (53 FR 22727) and independently by the Service on June 16, 1988, (53 FR 22582). Comments received from the public review of the draft of SEIS 88, other available scientific and technical data, and the currently diminished status of many populations of migratory birds, especially ducks, have also influenced the ROD. The ROD selects Alternative 2 of SEIS 88 as the best alternative, i.e., framework regulations (e.g., season lengths, daily bag limits) will be stabilized for short periods of years, and use of special regulations (e.g., bonus bags, early seasons) will be subject to greater scrutiny and control.

DATE: The decision is effective on August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Washington, DC 20240 (202-254-3207).

SUPPLEMENTARY INFORMATION: The ROD follows: Regulations permitting the sport hunting of migratory birds have been promulgated annually since 1918 when the Migratory Bird Treaty Act went into effect. The annual regulations, per se, are explicit. Steps leading to their promulgation are well defined, the process being prescribed by statute, regulation, and executive order, and

being strongly influenced by phenological events. However, the promulgation of annual regulations has occurred largely without a basic underlying approach being formally established and elaborated. This is not to say that annual regulations have been promulgated capriciously or without thought, but rather that they have not had the benefit of guidance from a formally established approach, one that reflects philosophy, policy and intent, and one that has been developed in concert with states and other interested parties, and acknowledged by them.

Prior to 1980, a de facto approach to annual regulations existed with regulations being adjusted annually to varying degrees in an attempt to alter the annual harvest to correspond with the anticipated size of migratory bird populations. Regulations generally were liberalized when populations increased and were restricted when they decreased. The 1980-84 Stabilized Regulations Study established an experimental approach to issuing those annual regulations commonly referred to as "framework regulations," i.e., season lengths and daily bag limits were not changed during that period. The study produced valuable results. However, the final report was technical in nature and not intended to be a policy document or to provide a forum for debating new approaches to issuing annual regulations. Furthermore, the study did not concern the other large, complex portion of annual regulations, the so called "special regulations" (e.g., early seasons, bonus bags).

The 1975 Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75) provided NEPA compliance for annual regulations and assessed the overall environmental impacts of them. FES 75 affirmed that regulations would be issued annually by the Service, but it did not step down to proposing alternative approaches under which the Service might do so.

Recognizing the need to update FES 75 and to formalize a basic approach to issuing annual regulations, the Service prepared and released SEIS 88. Two approaches to issuing annual framework regulations were considered in SEIS 88. They were:

Stabilized regulations: Framework regulations would remain unchanged for a specific period of years barring significant changes in migratory bird populations. This was the approach taken to issuing annual duck hunting regulations during the Stabilized Regulations Study, 1980-84. In fact, it has been the customary approach to

issuing regulations for most other groups of birds for some time. Flyway councils and other interested parties would be consulted to establish levels at which regulations would be stabilized, to establish population levels at which departures from stabilized regulations would occur, and to determine appropriate actions after such occurrences. Population data would continue to be gathered and reviewed annually through the established public process.

Annually adjusted regulations: Framework regulations would be subject to change annually in response to population changes and management goals. Regulations would be liberalized when population changes were positive and restricted when negative. This approach would be similar to approaches taken in issuing duck hunting regulations prior to 1980.

Three approaches to promulgating annual special regulations were considered also:

Expanded use of special regulations: The development of new special regulations and harvest strategies, and the expansion of existing regulations, would continue as in recent years.

Controlled use of special regulations: Development of new special regulations and harvest strategies, and expansion of existing regulations would be subject to advance planning and feasibility assessment, and to stricter experimentation and evaluation than in the past. Use of existing special regulations would be re-evaluated periodically.

Reduced use of special regulations: Existing special regulations and harvest strategies would be evaluated with the objective of eliminating those lacking a strong biological justification. Unless special regulations and experimental harvest strategies could be demonstrated not to be detrimental, they would not be accorded operational status. Six combinations of above approaches were possible and were presented as the alternatives of SEIS 88:

Alternative 1: Stabilized regulations with expanded use of special regulations.

Alternative 2: Stabilized regulations with controlled use of special regulations. This was presented as the Service's preferred alternative.

Alternative 3: Stabilized regulations with reduced use of special regulations.

Alternative 4: Annually adjusted regulations with expanded use of special regulations. This was the No Change (No Action) alternative.

Alternative 5: Annually adjusted regulations with controlled use of special regulations.

Alternative 6: Annually adjusted regulations with reduced use of special regulations.

For the following reasons I have decided to implement Alternative 2, stabilized framework regulations with controlled use of special regulations, as the Service's basic approach to issuing annual regulations permitting the sport hunting of migratory birds:

1. Alternative 2 represents a more conservative, cautionary approach to issuing annual regulations than does the No Action (No Charge) alternative (Alternative 4). Such an approach is advisable in view of the diminished status of many migratory bird populations.

2. Alternative 2 will provide a sound basis for cooperative long-term management of migratory bird harvests. States and other interested parties will participate with the Service in developing appropriate levels of regulatory stability and criteria for departure.

3. Alternative 2 provides optimal flexibility in the use of special regulations. Improved control over special regulations will be effected without regulations being unnecessarily restrictive of harvest opportunity, and unavailable when needed as harvest management tools.

4. Alternative 2 will: Result in simpler, better understood regulations; facilitate advanced planning by wildlife agencies, hunters, and those providing goods and services to hunters; and reduce administrative burdens and costs to wildlife agencies.

5. Alternative 2, by stabilizing framework regulations and providing greater control and scrutiny of special regulations, will facilitate a better understanding of regulatory effects on harvests and migratory bird populations.

6. Those alternatives incorporating annually adjusted framework regulations (Alternatives 4, 5, and 6) lack the important advantages of stabilized framework regulations as stated in reasons 2-5.

7. Those alternatives incorporating expanded use of special regulations (Alternatives 1 and 4) would not provide adequate protection of migratory bird populations that are at low levels.

8. Those alternatives incorporating reduced use of special regulations (Alternatives 3 and 6), with its underlying objective of eliminating all but conclusively and scientifically justified special regulations, would be overly restrictive. The effects of many special regulations are not clear. These

would be eliminated because a negative presumption would be applied in inconclusive cases. Thus, even benign relations might be eliminated, unnecessarily reducing hunting opportunities and management prerogatives.

9. Alternative 2 was favored by parties commenting on SEIS 88.

Alternative 6 annually adjusted regulations with reduced use of special regulations, is identified as the environmentally preferred alternative under current conditions. It would afford the greatest reduction in hunting opportunity, thus leading to the greatest reductions in harvest. Alternative 6 would also allow for a faster recovery time of populations at low levels. However, the restrictive approach of Alternative 6 would only be appropriate when migratory bird populations were low and in need of additional protection. Such situations occur; witness the present situation in which many populations are low, especially ducks. However, historically, such situations have been temporary, with most populations fluctuating normally, depending principally on habitat conditions. Thus, Alternative 6 would be appropriate only on a short-term basis.

Alternative 2 will provide adequate protection for migratory bird populations, even if populations reach short-term low levels while regulations are stable, because under stabilized regulations appropriate levels of regulation will be established and criteria for consideration of departure from those levels will be set. Annual reviews of regulations and population status will still occur under Alternative 2; and, presumably, low population levels will trigger consideration of departure from the existing level of stability. Emergency regulatory actions will still be available to the Service if needed on a short-term basis. Alternative 2, in short, allows the Service to gain the benefits of Alternative 6 when they are needed, and to avoid its disadvantages when they are not, as they likely will not be in the long-term.

In summary, I have decided that Alternative 2, stabilized framework regulations with controlled use of special regulations is the most prudent and appropriate approach to issuing annual regulations permitting the sport hunting of migratory birds. It provides adequate safeguards to the migratory bird resource, and it offers important managerial and socioeconomic benefits.

Having satisfied the requirements set forth in 40 CFR 1506.10(a) and b(2), implementation of my decision begins immediately with publication of the

ROD in today's Federal Register. In practice, implementation will occur gradually as appropriate levels of regulation, conditions for possible departure from them, and criteria for special regulations are developed. The Service looks forward to cooperating with states, flyway councils and other interested parties in this important endeavor.

Date: August 9, 1988.

Frank Dunkel,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 88-18726 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80482-8082]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces revised quotas for coho salmon in commercial and recreational fisheries south of Cape Falcon, Oregon. The Director, Northwest Region, NMFS (Regional Director), has determined, in accordance with provisions of the preseason announcement of the 1988 ocean salmon management measures, that the coho salmon quota in the recreational fishery south of Cape Falcon, Oregon, should be reduced by 45,000 fish, and that the commercial coho salmon quota should be increased by the same amount in the same area. This action is necessary to conform to the preseason announcement of 1988 management measures and is intended to allow maximum harvest of ocean coho salmon quotas established for the 1988 season.

EFFECTIVE DATE: The inseason adjustment to commercial and recreational management measures in the exclusive economic zone (EEZ) south of Cape Falcon, Oregon, is effective at 0001 hours local time, August 15, 1988. Comments on this action will be received through August 30, 1988.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115-

0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, or Rodney R. McInnis at 213-514-6199.

SUPPLEMENTARY INFORMATION:

Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. In its preseason notice of 1988 management measures (53 FR 16002, May 4, 1988), NOAA announced that the overall recreational impact (hooking mortality and landings) quota would be 298,400 coho salmon from Cape Falcon, Oregon, to the U.S.-Mexico border. The commercial fishery from Cape Falcon to the U.S.-Mexico border would be managed not to exceed an impact (hooking mortality and landings) quota of 684,700 coho salmon. On or about August 1, the Pacific Fishery Management Council's Salmon Technical Team (Team) would estimate the number of coho salmon needed to complete the recreational seasons south of Cape Falcon, and that any portion of the recreational quota not needed to complete scheduled recreational seasons would be reallocated to the commercial fishery (53 FR 16010 May 4, 1988).

Members of the Team conferred on August 12 and, based on the best available information, projected that the recreational fisheries south of Cape Falcon would harvest only 253,400 coho salmon during the course of the season, leaving 45,000 coho salmon available for transfer to the commercial fishery.

Therefore, NOAA issues this notice: (1) To reduce the recreational quota for the area south of Cape Falcon from 298,400 to 253,400 coho salmon, and (2) to increase the commercial quota for the area south of Cape Falcon from 684,700 to 729,700 coho salmon, effective at midnight, August 15, 1988. This notice does not apply to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game before making these adjustments to commercial and recreational quotas for coho salmon south of Cape Falcon. The State of Oregon will manage the commercial fishery in state waters adjacent to this area of the EEZ in accordance with this federal action.

Any delay in taking this action could likely result in the premature attainment of the commercial coho quota and the unjustified disruption of the commercial salmon fishing season in the area. Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective date, through August 30, 1988.

Federal regulations at 50 CFR 661.21(b)(1)(i) authorize the modification of quotas if certain findings are made as described in the appendix to 50 CFR Part 661, Section III.B. Accordingly, the Regional Director has determined this inseason adjustment is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated fishing rights, and the ocean allocation scheme in the FMP. This inseason adjustment is based on consideration of the total allowable impact limitation for coho salmon south of Cape Falcon, Oregon, the amount of recreational catch of coho salmon and recreational effort in the area to date, the estimated average daily catch per recreational fisherman, and the predicted recreational fishing effort for the area to the end of the scheduled season.

Other Matters

This action is authorized by 50 CFR 661.21(b)(1)(i) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: (16 U.S.C. 1801 *et seq.*)

Dated: August 15, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-18750 Filed 8-15-88; 3:59 pm]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 80482-8082]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of rescission of scheduled fishery opening.

SUMMARY: NOAA announces the rescission of the scheduled August 15,

1988 opening of the ocean commercial salmon fishery for all salmon except coho in the exclusive economic zone (EEZ) from Sisters Rocks to Mack Arch, Oregon. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council (Council), the Oregon Department of Fish and Wildlife (ODFW), and the California Department of Fish and Game (CDFG), that the commercial fishery quota of 63,000 chinook salmon through August 31, 1988 for the area between Orford Reef Red Buoy, Oregon, and Horse Mountain, California, has been attained in earlier fisheries, and that the scheduled August 15 opening must be rescinded. This action is necessary to conform to the preseason announcement of 1988 management measures and is intended to ensure conservation of chinook salmon.

EFFECTIVE DATE: Rescission of the scheduled opening of the EEZ from Sisters Rocks to Mack Arch, Oregon, to commercial salmon fishing is effective at 0001 hours August 15, 1988. Comments on this adjustment will be received through August 30, 1988.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, or Rodney R. McInnis at 213-514-6199.

SUPPLEMENTARY INFORMATION:

Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. In its preseason announcement of 1988 management measures (53 FR 16002, May 4, 1988), NOAA announced that the commercial fishery in the area between Orford Reef Red Buoy, Oregon, and Horse Mountain, California, would be managed not to exceed a quota of 63,000 chinook salmon through August 31, 1988. Three fisheries have been conducted in this area which, based on the best available information, have taken a total of 77,400 chinook salmon as outlined below:

(1) The commercial fishery for all salmon except coho in the subarea from Sisters Rocks to Chetco Point, Oregon, which closed in Federal waters on May 4, 1988 (53 FR 16415, May 9, 1988), had

actual landings totaling 8,900 chinook salmon.

(2) The State of California authorized a special commercial fishery in State waters (0-3 nautical miles) near Shelter Cove (i.e., between Horse Mountain and Cape Vizcaino, California) during May which was not accounted for when the 1988 ocean salmon seasons were established. This fishery increased the impacts on Klamath River fall chinook salmon above the levels projected in the preseason management measures. In order to account for these increased impacts, 6,200 fish were deducted from the overall chinook quota as provided by § 661.20(a)(3).

(3) The commercial fishery for all salmon in the subarea from Humbug Mountain, Oregon, to Punta Gorda, California, which closed in Federal waters on June 7, 1988 (53 FR 22000, June 13, 1988), had actual landings totaling 63,300 chinook salmon.

Actual catches exceeded the overall quota of 63,000 chinook by 14,400 fish. As announced in the preseason management measures, a commercial fishery from Sisters Rocks to Mack Arch, Oregon, for all salmon except coho was scheduled to open the later of August 15, 1988 or the end of the troll fishery from Humbug Mountain to Punta Gorda, and continue through the earlier of August 31 or the attainment of a 7,500 subarea chinook quota. This 7,500 subarea chinook quota is part of the overall quota of 63,000 chinook salmon

which has been exceeded. Therefore, no fish are available to conduct this fishery.

Federal regulations at § 661.21(a)(1) specify that "When a quota for the commercial or recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the Federal Register under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached." The closure of the commercial fishery in the subarea between Humbug Mountain, Oregon, and Punta Gorda, California, on June 7, 1988 (53 FR 22000, June 13, 1988) in effect closed the entire area between Orford Reef Red Buoy, California, and Horse Mountain, California, which is being managed by an overall chinook quota. Further evaluation of landing data resulted in the finding that the overall chinook quota has been reached, thus precluding the scheduled August 15, 1988 opening of the commercial fishery in the subarea from Sisters Rocks to Mack Arch, Oregon.

Therefore, NOAA issues this notice to rescind the scheduled opening of the ocean commercial salmon fishery for all salmon except coho in the EEZ from Sisters Rocks to Mack Arch, Oregon, effective at 0001 hours local time, August 15, 1988. This notice does not

apply to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Council, ODFW, and CDFG regarding the rescission of the scheduled August 15, 1988 opening of the commercial fishery from Sisters Rocks to Mack Arch, Oregon. The State of Oregon also will rescind the scheduled opening of the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective date, through August 30, 1988.

Other Matters

This action is authorized by 50 CFR 661.21(a)(1) and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: August 15, 1988.

Richard H. Schaefer,
Director of Office of Fisheries Conservation
and Management, National Marine Fisheries
Service.

[FR Doc. 88-18772 Filed 8-15-88; 4:36 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 160

Thursday, August 18, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1765

Telephone Materials, Equipment, and Construction—Telephone Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration proposed to add Part 1765, Telephone Materials, Equipment, and Construction—Telephone Program, to 7 CFR Chapter XVII. This new subpart consolidates, revises, and clarifies the policies, requirements, and procedures presently contained in various REA publications.

Part 1765 sets forth the provisions and requirements of the RE Act and the REA administrative policies, requirements, and procedures for the procurement of materials and equipment and the construction of telecommunication facilities by REA telephone borrowers with REA loan funds. The primary objectives of the proposed rule are to update, consolidate, clarify, and simplify REA policies and procedures; to lessen the burden on borrowers involved in planning and construction of telecommunication facilities; and to decrease the processing time of related documents by REA.

All borrowers that are parties to the planning and construction of borrowers' telecommunication facilities and systems will be affected by this rule.

DATE: Public comments concerning this proposed rule must be received by REA no later than September 19, 1988.

ADDRESS: Comments may be mailed to William F. Albrecht, Deputy Assistant Administrator—Telephone, Rural Electrification Administration, Room 4056, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500. Comments received may be inspected in Room 4056 between 8:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: William F. Albrecht, Deputy Assistant

Administrator—Telephone, Rural Electrification Administration, Room 4056, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone number (202) 382-9549. The Draft Regulatory Impact Analysis describing the options considered in developing this rule is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of \$100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

Public reporting burden for this collection of information is estimated to average .7 of an hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Attn: Desk Officer for REA, Office of Management and Budget, Washington, DC 20503.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural

Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

Currently, the policies and requirements for the procurement of materials and equipment and the construction of telecommunication facilities by REA telephone borrowers with REA loan funds are contained in numerous REA publications including the following existing REA Bulletins:

- 320-15 Equal Employment Opportunity in Construction Financed with REA Loans.
- 340-1 Final Payments to Contractors, Engineers, and Architects—Telephone Program.
- 340-2 Payments to Architects, Engineers, Contractors, and Suppliers.
- 340-3 Coordination of Borrowers' Activities with Connecting Systems.
- 340-4 Scheduling of Work and Reporting of Progress.
- 344-1 Methods of Purchasing Materials and Equipment for Use on Systems of Telephone Borrowers.
- 344-3 "Buy American" Requirement.
- 380-1 Right-of-way and Title Procedures—Telephone.
- 380-3 Weekly Progress Report of Telephone Construction and Engineering Services.
- 381-1 Tabulation of Bids for Contract Construction of Telephone Outside Plant Facilities.
- 381-2 Telephone System Construction Contract, Labor and Materials, REA Form 515.
- 381-4 Closeout Documents, Telephone Construction Contract, Labor and Materials (Outside Plant).
- 381-7 Methods of Construction of Telephone Borrowers' Initial System Outside Plant Facilities.
- 381-8 Contract Construction, Telephone Borrowers' Initial System Outside Plant Facilities.
- 381-9 Amendments to Contracts for Construction or Installation of Telephone Borrowers' Facilities.
- 381-10 Subcontracts Under Contracts for Construction or Installation of Telephone Borrowers' Facilities.
- 381-11 Changes or Corrections in Line Construction.
- 381-13 Bidders' Qualifications.
- 383-1 Preparation of Telephone System Plans and Specifications for Construction of Outside Plant.
- 382-1 Force Account Construction, Telephone Borrowers' Initial Systems.

- 382-2 Construction of Telephone System Improvements and Extensions by Work Order or Contract.
- 383-4 Postloan Engineering Design Requirements for Supplemental Loans.
- 384-1 Purchasing and Installing Central Office Equipment.
- 384-2 Closeout Documents for Central Office Equipment Contracts.
- 384-3 Central Office Equipment Contracts and Specifications.
- 385-2 Purchasing and Installing Special Electronic Equipment.
- 385-3 Closeout Documents for Special Equipment Contracts.
- 385-4 Special Equipment Contracts and Specifications.
- 387-1 Preparation of Plans and Specifications for Construction of Telephone Borrowers' Buildings.
- 387-2 Contract to Construct Buildings, REA Form 257.
- 387-3 Final Documents Required to Close Out Construction of Buildings, Telephone Program.
- 387-4 Presentation of Building Plans and Specifications.
- 387-5 Contract Construction, Telephone Borrowers' Buildings.

Many of these are outdated and contain conflicting information. It is necessary to consolidate the information and make it available to the public by publishing it in the Federal Register.

The Bulletins listed above contain certain policies, requirements, and procedures that will be incorporated into other CFR Parts. When that is accomplished, these Bulletins will be rescinded.

Presently a term may have different meaning when used in more than one bulletin. The proposed rule defines each term so that it has the same meaning throughout.

A postloan review is presently required of the supporting data upon which a loan was based before proceeding with detailed engineering and construction planning. The proposed rule requires a preconstruction review of the Loan Design approved by REA and clarifies the required actions if any significant changes have occurred. It also clarifies the supporting data to be submitted to obtain REA approval for special types of construction.

Presently construction is classified as "initial system" or "improvements and extensions". Classification of construction included in supplemental loans has not been well defined and causes controversy as to the required method of construction to be used. The proposed rule classifies construction as "major" or "minor" depending on the estimated cost of the construction project, major being over \$100,000 and minor being \$100,000 or under, labor and materials. The methods of construction, standards, specifications, general

requirements, and construction documents are more clearly defined and their uses clarified.

The requirements and procedures for construction of buildings have been shortened and more clearly stated.

The rapid changes in digital and lightwave technology have rendered the present policies, requirements, and procedures for providing telecommunications switching and transmission facilities quite inadequate to meet current needs of the REA telephone borrowers. The proposed rule updates the requirements and procedures by providing for a complement of spare parts, a software license agreement, and a central office grounding system audit when procuring central office and electronic equipment. The proposed rule provides for the procurement of central office equipment by sealed competitive bidding or, with prior REA approval, by single source negotiation to replace the present two-step negotiation procedure. The proposed requirements and procurement methods for special equipment are simplified.

The proposed rule clarifies the policies and procedures for major construction of outside plant facilities. Construction may be by sealed competitive bids, negotiated bids up to \$200,000, labor and materials or, with prior REA approval, by the borrower's own forces.

This proposed rule eliminates some reporting requirements and streamlines others, reducing the borrowers' burden, while permitting REA to maintain the security of the Government's loans.

7 CFR Part 1765 supersedes any sections of REA Bulletins with which it is in conflict.

List of Subjects in 7 CFR Part 1765

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA proposes to amend 7 CFR Chapter XVII by adding the following new Part 1765:

PART 1765—TELEPHONE MATERIALS, EQUIPMENT AND CONSTRUCTION—TELEPHONE PROGRAM

Subpart A—General

- Sec.
- 1765.1 General.
- 1765.2 Definitions.
- 1765.3 Preconstruction review.
- 1765.4 Major and minor construction.
- 1765.5 Methods of major construction.
- 1765.6 Standards, specifications, and general requirements.
- 1765.7 Plans and Specifications (P&S).
- 1765.8 Contract construction procedures.
- 1765.9 Subcontracts.

Sec.

- 1765.10 Preconstruction conference.
- 1765.11 Contract amendments.
- 1765.12-1765.14 [Reserved]

Subpart B—Construction of Buildings

- 1765.15 General.
- 1765.16 Plans and Specifications.
- 1765.17 Bidding procedure.
- 1765.18 Contract amendments.
- 1765.19 Force account procedures.
- 1765.20 Closeout procedures.
- 1765.21-1765.25 [Reserved]

Subpart C—Purchase and Installation of Central Office Equipment

- 1765.26 General.
- 1765.27 Plans and Specifications (P&S).
- 1765.28 Procurement procedures.
- 1765.29 Closeout documents.
- 1765.30-1765.35 [Reserved]

Subpart D—Outside Plant; Major Construction by Contract

- 1765.36 General.
- 1765.37 Plans and Specifications (P&S).
- 1765.38 Procurement procedures.
- 1765.39 Closeout documents.
- 1765.40-1765.45 [Reserved]

Subpart E—Outside Plant Major Construction by Force Account

- 1765.46-1765.55 [Reserved]

Subpart F—Purchase and Installation of Special Equipment

- 1765.56 General.
- 1765.57 Contracts and specifications.
- 1765.58 Purchasing special equipment.
- 1765.59-1765.65 [Reserved]

Subpart G—Methods of Minor Construction

- 1765.66-1765.80 [Reserved]

Subpart H—Construction Certification Program

- 1765.81-1765.99 [Reserved]
- Appendix A—Documents Required to Closeout Construction of Buildings.
- Appendix B—Documents Required to Closeout Central Office Equipment Contract.
- Appendix C—Documents Required to Closeout Telephone Construction Contract REA Form 515.
- Appendix D—Step-by-Step Procedure for Closing Out of Telephone Construction Contract Labor and Materials, REA Form 515.
- Appendix E—Reserved.
- Appendix F—Documents Required to Closeout Special Equipment Contracts.
- Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

Subpart A—General

§ 1765.1 General.

(a) The standard REA Loan Documents (as defined in 7 CFR Part 1758) contain provisions regarding procurement of materials and equipment and construction of telecommunication facilities by telephone borrowers. This Part 1765 implements certain of the

provisions by setting forth the requirements and procedures to be followed by borrowers for purchasing materials and equipment and construction of telecommunication facilities by contract or force account.

(b) The typical procedure followed in constructing a project financed by an REA loan begins with the prospective borrower obtaining the necessary preloan engineering and developing a complete loan application, including an LD (see 7 CFR Part 1749). If a loan is approved and all prerequisites to advance of funds are satisfied, the borrower may proceed with the purchase and installation of materials, equipment and the construction of telephone facilities pursuant to this Part 1765. Subpart A describes (1) REA's general requirements with respect to steps to be taken after the loan is approved and before construction begins (See § 1765.3), (2) REA requirements with respect to methods of construction (See §§ 1765.5 and 1765.6), (3) REA requirements regarding sealed competitive bidding and negotiated bidding on construction contracts (See §§ 1765.6 and 1765.9), (4) REA standards for materials, equipment, and construction financed with loan funds (See § 1765.7), and (5) REA requirements for subcontracts and contract amendments covering construction financed with loan funds (See §§ 1765.10 and 1765.12).

(c) Each borrower is responsible for the construction of its facilities and for the procurement of materials and equipment which are best suited to its needs.

(d) If contracts, P&S, or other methods of procurement are subject to REA approval pursuant to the provisions of the loan contract, as implemented by this part, REA will review the documents or proposals submitted and notify the borrower in writing of approval or disapproval. REA may withhold approval if, in REA's judgement:

(1) The P&S or contract will not accomplish loan purposes.

(2) Provisions of the P&S or contract will add unnecessary expense to the project.

(3) The proposal, method of procurement, or P&S will not effectively or efficiently further the extension or improvement of telephone service in rural areas, or if they present unacceptable loan security risks to REA.

(4) The P&S or contract have been modified.

(e) The requirements and procedures covering procurement of architectural and engineering services are described in 7 CFR Part 1763.

(f) Single copies of REA forms cited in this Part are available from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250-1500. These REA forms may be reproduced.

§ 1765.2 Definitions.

For the purpose of this Part 1765:

Alternate—A solicitation for a bid adjustment for a specified deviation from the Plans and Specifications.

Bid Guarantee—A bid bond or certified check required of contractors bidding on construction work to ensure that the bidder, if successful, will furnish a satisfactory performance bond ensuring completion of work.

Central Office Building—The facility housing the central office equipment.

Central Office Equipment—Switching and signaling equipment that performs call completion functions for subscribers.

Closeout Documents—The documents required to certify satisfactory completion of all obligations under a contract or force account proposal.

Construction—Purchase and installation of telecommunications facilities in a borrower's system using loan funds.

Contract—The agreement between the borrower and an independent contractor covering the purchase, construction, or both of telephone facilities to be included in the borrower's telephone system.

Contract Construction—Construction and installations performed using an REA contract form. See 7 CFR Part 1762.

Engineer—Also means "architect," where appropriate.

FAP (Force Account Proposal)—The borrower's detailed plans submitted to REA for force account construction.

Force Account Construction—Construction performed by the borrower's employees under an REA approved FAP, with the borrower furnishing all materials, equipment, tools and transportation.

FRS—REA Form 481 (OMB 0572-0023), Financial Requirement Statement.

GFR—REA General Field Representative.

Installation—The act of setting up or placing in position equipment for service or use in the borrower's system.

Interim Construction—The purchase of equipment or the conduct of construction under an REA-approved plan of interim financing. See 7 CFR Part 1749.

Labor and Materials—All the labor and materials required for construction.

LD (Loan Design)—Supporting data for a loan application. See 7 CFR Part 1749.

Loan—Any loan made or guaranteed by REA. See 7 CFR Part 1745.

Loan Funds—Funds provided by REA through direct or guaranteed loans. See 7 CFR Part 1754.

Major Construction—A telephone plant project estimated to cost more than \$100,000, including all labor and materials.

Minor Construction—A telephone plant project estimated to cost \$100,000 or less, including all labor and materials.

Minor Errors or Irregularities—A defect or variation in a seller's bid that is a matter of form and not of substance. Errors or irregularities are "minor" if they can be corrected or waived without being prejudicial to other bidders and when they do not affect the price, quantity, quality, or timeliness of construction. Unless otherwise noted, the borrower determines whether an error or irregularity is "minor."

Negotiation—Any form of purchasing or contracting other than sealed competitive bidding. Any contract awarded without using the sealed competitive bidding procedure is a negotiated contract.

Outside Plant—The facilities that conduct electrical or optical signals between the central office and the subscriber's network interface or between central offices.

Performance Bond—A surety bond on a form satisfactory to REA guaranteeing the contractor's faithful performance of a contract.

P&S (Plans and Specifications)—An REA contract form, the appropriate specifications, and such additional information and documents needed to provide a clear, accurate, and complete understanding of the installations to be made or construction to be performed.

Project—The construction or installation described in the P&S.

Responsive Bid—A bid that complies with the requirements of the plans and specifications.

Sealed Competitive Bidding—A method of contracting that employs sealed competitive bids, public opening of bids, and award of the contract to the bidder submitting the lowest responsive bid. See § 1765.8.

Single Source Negotiation—Negotiating with a single source (contractor or seller).

Special Equipment—Equipment used primarily for the transmission and enhancement of voice, data, carrier, radio and light signals, and other equipment and facilities, including

incidental cable and other transmission equipment.

Subcontract—A secondary contract undertaking some of the obligations of a primary contract. Under all REA forms of contract, the primary contractor bears full responsibility for the performance of the subcontractor.

Unbalanced Bid—A bid that contains disproportionate prices between labor and materials or between various construction units.

Work Order Construction—Minor construction performed by the borrower's employees, pursuant to its work order procedure, with the borrower furnishing all materials, equipment, tools, and transportation.

§ 1765.3 Preconstruction review.

(a) Prior REA approval must be obtained for any construction that does not conform to the approved LD, such as construction of extensions to serve subscribers in areas not included in the LD (See 7 CFR Part 1749) or conform to REA standards and specifications. To obtain approval, the borrower shall submit a written proposal containing:

- (1) A description of the work, indicating any deviations from the approved LD or REA standards and specifications.
- (2) An engineering study covering the deviations if there are changes in the design.
- (3) A cost estimate for labor, engineering, materials, and overheads.

(b) Before any construction, including interim construction, is initiated, the GRF shall meet with the borrower to review the LD to determine if any significant changes have occurred since its approval by REA. It is important that the design and construction of the proposed facilities be based on the latest information on subscriber needs.

(c) If the borrower and GRF agree that there have been no significant changes, the borrower may proceed.

(d) If the borrower and GRF agree that the data is no longer satisfactory, the borrower shall prepare an amendment to the LD (See 7 CFR Part 1749) incorporating the necessary revisions. The borrower must obtain REA approval of the LD amendment before proceeding with engineering activities on any project to be financed with loan funds.

§ 1765.4 Major and minor construction.

REA's general requirements for construction are set forth in this Subpart A. Additional requirements and procedures for different types of major construction are presented in Subparts B, C, D, E, and F. The requirements and procedures for minor construction are presented in Subpart G. Borrowers may,

at their option, following the procedures in Subparts B, C, D, E, and F for any minor construction.

§ 1765.5 Methods of major construction.

(a) All major construction projects financed by loan funds shall be performed pursuant to a contract approved by REA and awarded through sealed competitive bidding unless a specific exemption is granted in Subparts B, C, D, E, or F, or written REA approval is obtained.

(b) Contract Construction. (1) Whether the contractor is selected through sealed competitive bidding or negotiation, as approved by REA, the contract may not be awarded until REA approval of the award has been obtained.

(2) The requirements and procedures for sealed competitive bidding are presented in § 1765.8(a). The requirements and procedures for negotiation are presented in § 1765.8(b).

(c) Force Account Construction. REA will approve the force account method for major construction only if the borrower can demonstrate to REA's satisfaction that it has adequate equipment and experienced personnel to perform the work and that this method will be effective and efficient and will not present unacceptable loan security risks to REA. The requirements and procedures for force account construction are presented in Subparts B, C, E, and F.

§ 1765.6 Standards, specifications, and general requirements.

(a) Materials, equipment, and construction must meet the standards and specifications established by REA. 7 CFR Part 1772 lists the REA Bulletins containing the standards and specifications for telephone facilities. Materials and equipment meeting these standards are included on the List of Material Acceptable for Use on Systems of REA Telephone Borrowers, REA Bulletin 344-2. This bulletin may be obtained by subscription from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(b) If operating conditions or requirements make the use of non-standard construction, materials, or equipment necessary, the borrower must obtain approval of the REA Area Director prior to the purchase or commencement of construction.

(c) Only new materials and equipment shall be purchased, unless otherwise approved by REA.

(d) All purchases of materials and equipment are subject to the "Buy American" provision (7 CFR Part 1790 and REA Bulletin 344-3).

§ 1765.7 Plans and Specifications (P&S).

(a) The P&S consist of an REA contract form, the appropriate REA specifications, and such additional information and documents needed to provide a clear, accurate, and complete understanding of what is included in the construction.

(b) 7 CFR Part 1762 provides a list of the REA forms of telecommunications contracts for use in purchasing telephone materials and equipment and for constructing telephone facilities with loan funds. Also listed is the source where copies may be obtained.

(c) The appropriate standards and specifications listed in 7 CFR Part 1772 shall be included in the P&S. When REA has not prepared standards and specifications, the borrower shall use general engineering requirements and functional specifications prepared by the borrower's engineer and approved by REA.

(d) The P&S shall be based on the LD approved by REA. Section 1765.3 presents the requirements and procedures for obtaining REA approval for construction that does not conform to the LD approved by REA.

(e) REA approval of the P&S is required for major construction but not for minor construction, except as noted in Subpart B.

(f) REA will approve only contracts meeting the following requirements:

(1) *Equal Employment Opportunity Provision.* If this provision is not already in the contract, REA Contract Form 270, Equal Opportunity Addendum, shall be attached and made a part of the contract.

(2) *Liquidated Damages Provision.* (i) If not covered by the contract, an appropriate liquidated damages provision, in a form prescribed by REA, shall be included and made a part of the contract.

(ii) The liquidated damages must be based upon the borrower's best estimate of the damages it would incur as a result of the contractor's default.

(3) *Insurance and Bond Requirements.* (i) The insurance provision shall provide coverage as required by 7 CFR Part 1788.

(ii) A contractor's bond shall be furnished as required by 7 CFR Part 1788.

(iii) The borrower is responsible for ensuring that its contractor complies with the insurance and bond requirements.

(4) *Software License Provision.* If the equipment being purchased involves software, the contract shall contain a software provision requiring a licensing agreement which grants the borrower

the right to use the software subject to reasonable terms and conditions.

§ 1765.8 Contract construction procedures.

(a) *Sealed Competitive Bidding*—(1) *Bid Opening Date.* Upon approval of the P&S by REA, the borrower shall schedule a bid opening date. In setting the date sufficient time should be allowed for bidders to examine the project site and prepare their bids. The GFR will usually attend the bid opening.

(2) *Invitations to Bid.* The engineer shall submit to the borrower a list of prospective bidders and a recommendation indicating which bidders are considered qualified. The borrower is responsible for sending out invitations to prospective bidders and taking any other action necessary to procure full, free, and competitive biddings. The minimum number of contractors to be invited to bid on contracts for various types of facilities is set forth in the appropriate Subparts B, C, D, or F.

(3) *Qualifying Bidders.* If the notice and instructions to bidders require that bidders show evidence of meeting certain requirements, the borrower shall qualify bidders before issuing P&S to them. Procedures for qualifying bidders are contained in Subparts B, C and D.

(4) *Receipt of Bids.* The borrower shall write on the outside envelope of any bid or bid amendment, the date and time the bid was received. Any bid received from an unqualified bidder or after the time specified for opening shall be returned promptly to the bidder unopened.

(5) *Procedure When Less Than Three Bids are Received.* If less than three bids (exclusive of bids from unqualified bidders and late bids) are received, the borrower shall consult with REA to determine whether the bids are to be opened or returned unopened. REA requires that the project be rebid if fewer than three bids are received and REA determines that the borrower could have reasonably obtained other bids.

(6) *Conduct of Bid Openings.* Bid openings shall be conducted in the presence of representatives of the borrower. The borrower should be able to contact its attorney for immediate consultation. Bidders shall be invited to attend the bid openings.

(7) *Review of Bids.* (i) At the time bids are opened, the bid guarantees shall be checked for adequacy prior to reading bids.

(ii) The borrower's engineer should review all for errors and irregularities. If it appears to the borrower that errors or irregularities were made through inadvertence, the borrower may

authorize the bidder to make changes, or waive the errors or irregularities, or reject the bid as not responsive.

(iii) In the event of non-minor errors or irregularities, the bid shall be rejected and the bid price not disclosed.

(8) *Reading of Bids.* Bid prices shall not be read until the engineer has reviewed all bids to determine if there are any minor errors or irregularities that may affect the recommendation as to award. These shall be made public at the same time the bid price is announced.

(9) *Evaluating Bids.* Where alternates are included, the same alternates in all bids shall be used in determining low bid.

(10) *Rejection.* (i) All bids shall be rejected if quoted prices are not acceptable or if the specifications were ambiguous and resulted in bidders having varying interpretations of the requirements.

(ii) Any bid may be rejected if it is not responsive, incomplete, or submitted by an unqualified bidder, or unbalanced between labor and materials or other respects.

(11) *Award of Contract.* (i) The engineer, following review of the bids and determination of the lowest responsive bid, shall recommend award of the contract to the bidder making the low bid.

(ii) The borrower shall consider the engineer's recommendation and make its decision on the award, subject to REA approval.

(iii) The borrower shall send to REA for approval:

(A) Two copies of the low bid.

(B) The engineer's recommendation for acceptance of the low bid, supported by a tabulation of all bids.

(C) Evidence of acceptance of the low bid by the borrower, such as: (1) Certified copy of board resolution or (2) letter or telegram to REA signed by a properly authorized corporate official.

(12) *Execution of Contract.* (i) Upon approval of the accepted bid by REA, the borrower shall submit to REA three copies of the contract executed by the contractor and borrower.

(ii) If REA approves the contract, it shall return one copy to the borrower and send one copy to the contractor.

(b) *Negotiated Construction Contracts.* (1) For the construction of certain facilities the borrower may negotiate a contract rather than solicit sealed competitive bids. Refer to the appropriate Subparts C, D, or F for specific requirements and procedures.

(2) For negotiated purchases, borrowers use the same REA contract forms and standards and specifications as for sealed competitive bidding.

(3) After a satisfactory negotiated price has been obtained, the borrower shall submit it to REA for approval, along with the engineer's recommendation, and evidence of acceptance by the borrower.

(4) Upon approval of the negotiated proposal by REA, the borrower shall submit three copies of the contract, executed by the contractor and borrower, to REA for approval.

(5) Upon approval, REA shall return one copy of the contract to the borrower and one copy to the contractor.

§ 1765.9 Subcontracts.

(a) Each REA construction contract form (From 257, 397, 515, and 525) contains provisions for subcontracting. Reference should be made to the individual contracts for the amounts and conditions under which a contractor may subcontract work under the contract.

(b) REA Form 282, Subcontract (Under Construction or Equipment Contracts), shall be used for subcontracts under construction and installation contracts.

(1) Minor modifications or additions may be made to the subcontract form, so long as they do not change the intent of the primary contract. Any alterations to the subcontract shall be initialed and dated by the persons executing the subcontract.

(2) Subcontracts shall be prepared in quadruplicate and all copies executed by the contractor and subcontractor and consented to by the borrower and surety, if any.

(3) Four executed copies of the subcontract shall be forwarded to REA for approval. Upon approval, one copy each will be sent to the borrower, contractor, and subcontractor.

(c) As stated in each REA contract form, the contractor shall bear full responsibility for the acts and omissions of the subcontractor and is not relieved of any obligations to the borrower and to the Government under the contract.

(d) Construction shall not be performed by the subcontractor before approval of the subcontract by REA.

§ 1765.10 Preconstruction conference.

It is recommended that the borrower conduct a conference, attended by the borrower, contractor, resident engineer, and the GFR, prior to the beginning of construction to provide an opportunity to discuss and agree on responsibilities, procedures, practices, and methods before the work begins. The engineer shall provide each participant with a copy of the conference results.

§ 1765.11 Contract amendments.

(a) Prior REA approval must be obtained by the borrower before execution of any amendment to a contract if the amendment alters the terms and conditions of the contract or changes the scope of the project covered by the contract regardless of the amount of the contract before amendment, the amendment increases the amount to be paid under the contract by 20% or more, or after amendment, the amount of the contract will be \$100,000 or more.

(b) Other amendments may be executed by the contractor and borrower and submitted to REA for approval.

(c) For each amendment executed, the borrower should make certain that:

(1) The contractor's bond covers the additional work to be performed. If the amendment by itself (or together with preceding amendments) increases the original contract price by 20% or more, a bond extension will be required to bring the penal sum of the bond to the total amended contract price.

(2) If an amendment covers construction in a county or state not included in the original contract, the borrower and contractor are licensed to do business in that location.

(d) Amendments are to be submitted in triplicate to REA for approval with a copy of the board resolution or a letter signed by an authorized corporate official.

§§ 1765.12-1765.14 [Reserved]**Subpart B—Construction of Buildings****§ 1765.15 General.**

(a) This subpart implements and explains the provisions of the Loan Documents (as defined in 7 CFR Part 1758) setting forth the requirements and the procedures to be followed by borrowers in constructing central office, warehouse, and garage buildings with loan funds.

(b) Terms used in this subpart are defined in § 1765.2.

(c) REA will consider applications for loans to finance central office, warehouse, or garage facilities, but does not make loans to finance headquarters facilities, except in cases of financial hardship.

(d) All plans and specifications for buildings to be constructed with loan funds are subject to the approval of REA. Refer to § 1765.16 for further instructions.

(e) REA Contract Form 257, Contract to Construct Buildings, shall be used for the construction of all central office, warehouse, and garage buildings with

loan funds. Refer to § 1765.16 (b 7 c) for further instructions.

(f) Sealed competitive bids shall be required for all building construction, except for:

(1) Minor construction using Subpart G procedures.

(2) Major construction, where the borrower has received advanced approval to perform the construction by force account.

(3) Refer to §§ 1765.17 and 1765.19 for further instructions.

(g) The site location, design, and construction of the facilities must comply with all applicable laws and regulations, including:

(1) Public Law 90-480 (42 U.S.C. 4151) (Access to Physically Handicapped) requires certain buildings financed with Federal funds be designed and constructed to be accessible to the physically handicapped.

(2) Public Law 91-596 (29 U.S.C. 651) the Occupational Safety and Health Act of 1970. OSHA issues rules and regulations covering occupational safety and health standards for buildings. These regulations are codified in 29 CFR Chapter XVII.

(3) 7 CFR Part 1794 provides for compliance with the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) implementing the procedural provisions of NEPA, as well as REA's conformance with other laws, regulations, and Executive Orders regarding environmental protection.

(h) All construction of a project shall be performed under one general contract, unless the borrower demonstrates to REA's satisfaction that it will be more economical for the borrower to execute separate contracts for planting shrubbery, electrical work, mechanical work, surfacing of roads and parking areas, and other identifiable parts of the project. These separate contracts shall also be subject to REA approval as described in this Subpart B.

(i) The borrower is responsible for submitting evidence, satisfactory to REA, establishing that clear title to the building site has been obtained. REA will not approve the construction contract until it has given title clearance. Follow the procedures in REA Bulletin 380-1, Right-of-Way and Title Procedures-Telephone.

§ 1765.16 Plans and Specifications (P&S).

(a) P&S shall be prepared for construction of all buildings. Each set of P&S shall include:

(1) REA Contract Form 257, Contract to Construct Buildings, completed to the extent explained in § 1765.16(b).

(2) Complete and detailed specifications covering materials and workmanship.

(3) A detailed building plan.

(4) A site plan for each building showing the building location and giving the legal description of the site. Sufficient information must be provided for the site so that it can be identified as the same property on which title opinion was submitted to REA. The legal description shall be typed on the site plan. The borrower shall also furnish topographical information and a description of any proposed site development work and show proposed connections for public utilities.

(b) REA Contract Form 257 shall be completed as follows:

(1) *List the Names or Kinds of Buildings and Locations*—Site plan and specifications must be identified with the appropriate building.

(2) *Alternates*—The number of alternates shall be kept to a minimum. Items for which alternates are to be taken shall be fully described on a separate sheet in the specifications and the details shown on the plans, when necessary, and identified by the alternate number. Sufficient instruction shall be provided in the Notice and Instructions to Bidders as to how bids will be evaluated with respect to alternates.

(3) *Time of Construction*—A reasonable time for completion of construction, considering local conditions, shall be determined by the borrower and inserted in the space provided. Too short a construction period may discourage bidders or influence their bids. Completion of the building, where central office equipment is involved, shall be coordinated with delivery of the equipment. The time of completion shall allow adequate drying time before the central office equipment is stored or installed in the building.

(c) Two sets of the building plans and specifications shall be prepared and submitted to the GFR.

§ 1765.17 Bidding procedure.

Upon REA approval of the P&S, the borrower shall proceed as follows:

(a) Bid documents shall consist of a copy of the approved P&S, including REA Contract Form 257, completed in accordance with the instructions on the cover of the form and the plot plans showing site development details. For contracts in amounts of \$100,000 or less, the borrower must specify in the Notice and Instructions to Bidders whether the contractor will be required to furnish a performance bond or a builder's risk policy.

(b) The borrower shall determine that title to the real estate has been approved by REA before the invitations to bid are released.

(c) The borrower shall set the time for opening of bids, allowing ample time for bidders to prepare bids.

(d) The borrower shall solicit bids as set forth in § 1765.8(a)(2). Invitations shall be sent to at least six prospective bidders.

(e) The borrower shall conduct bid opening and award of contract in accordance with the procedure set forth in § 1765.8(a).

§ 1765.18 Contract amendments.

(a) The general requirements for contract amendments are set forth in § 1765.11.

(b) The borrower shall prepare construction contract amendments on REA Contract Form 238, Construction or Equipment Contract Amendments. See 7 CFR Part 1762 to obtain copies of Form 238.

§ 1765.19 Force account procedures.

(a) The procedures outlined in Subpart G may be used for minor construction of buildings.

(b) REA approval must be obtained in advance to use the force account method for major construction of buildings.

(c) P&S shall be prepared in accordance with § 1765.16.

(d) Prior to any construction activity or the purchase of materials or equipment, the borrower shall submit the FAP in duplicate to REA, accompanied by a resolution indicating approval to the board of directors of the borrower or a letter signed by an authorized corporate official. The proposal shall include:

- (1) Copy of the P&S.
- (2) An itemized list of all items of materials required for construction.
- (3) A construction schedule showing the estimated construction period for each major construction item.
- (4) An estimate of the material and labor and other costs for each major construction item eligible for REA financing.

(e) Force account construction should not be started until REA approval has been received by the borrower. See § 1765.19(b).

§ 1765.20 Closeout procedures.

(a) This section outlines the procedure to be followed to close out Contract to Construct Buildings, REA Contract Form 257 and construction or rehabilitation performed by the force account method.

(b) For REA Form 257 Contract. (1) Whenever changes were made in the

plans and specifications which did not require an amendment under conditions set forth in § 1765.11 a final contract amendment showing the changes shall be prepared and submitted to REA with the closeout documents.

(2) Immediately after completion of contract construction, including cleanup, the borrower shall:

(i) Arrange with its engineer, contractor, and the GFR for final inspection of the project.

(ii) Furnish the contractor a summary of corrections or additions required to complete the project in accordance with the plans and specifications and the contract and any contract amendments required to cover the corrections or additions.

(iii) Arrange, upon completion of the corrections by the contractor, to have its engineer prepare or obtain the documents listed on Appendix A which are required for closeout of contract construction.

(iv) Make distribution of the completed documents as indicated on Appendix A.

(c) Upon completion of force account construction, the borrower shall:

(1) Arrange with its architect or engineer and the GFR for final inspection of the project.

(2) Complete, upon completion of any corrections or additions, with the assistance of its engineer, the documents listed on Appendix A which are required for the closeout of force account construction.

(3) Make distribution of the completed documents as indicated on Appendix A.

(d) Final payment shall not be made until REA has approved the closeout documents.

§§ 1765.21-1765.25 [Reserved]

Subpart C—Purchase and Installation of Central Office Equipment

§ 1765.26 General.

(a) This subpart implements and explains the provisions of the Loan Documents (as defined in 7 CFR Part 1758) setting forth the requirements and the procedures to be followed by borrowers in purchasing and installing central office equipment financed with loan funds.

(b) Terms used in this subpart are defined in § 1765.02 and REA Contract Forms 525 and 545.

(c) REA Contract Form 525, Central Office Equipment Contract (Including Installation) shall be used when the firm supplying the equipment will install it; REA Contract Form 545, Central Office Equipment Contract (Not Including Installation) shall be used when the

supplier of the equipment will not be installing it. In either case the appropriate specifications shall be included in the contract.

(d) Alternates, if any, specified in the P&S shall be kept to a minimum.

(e) Sealed competitive bids shall be taken on all purchases of central office equipment to be purchased under REA Contract Form 525 or 545 using the procedure set forth in § 1765.28(a), unless REA approval to negotiate is obtained.

(f) The borrower may request permission to negotiate with a single supplier for additional central offices to standardize equipment on a system basis. REA approval to negotiate must be obtained before release of the plans and specifications to the supplier. Except for remote switching terminals associated with an existing central office, REA will not approve negotiation with a non-domestic manufacturer for the purpose of standardization because such a purchase does not meet the RE Act "Buy American" provisions.

(g) Materials and equipment must meet the standards and general specifications approved by REA. Materials and equipment included in REA Bulletin 344-2 "List of Materials Acceptable for Use on Telephone Systems of REA Borrowers" have been accepted as meeting these requirements. If the equipment is not included in the "List of Materials" but has been approved for field trial installations, the borrower must in each instance obtain field trial approval from REA prior to entering into any agreement with a supplier.

(h) Only new equipment shall be purchased unless otherwise approved by REA in specific cases.

(i) All purchases of materials and equipment are subject to the "Buy American" requirements. Refer to REA Bulletin 344-3.

(j) If the sealed competitive bid procedure is followed, negotiations after bid opening will not be permitted.

§ 1765.27 Plans and Specifications (P&S).

(a) General. (1) Prior to the preparation of P&S, the borrower shall review with the GFR the current and future requirements for central office equipment.

(2) The P&S shall specify the delivery and completion time required for each exchange.

(3) The P&S shall provide for a complement of spare parts to be provided to the borrower. The quantity and type of spare parts shall be determined in accordance with the provisions in REA Form 522 "General

Specification for Digital, Stored Program Controlled Central Office Equipment."

(b) *Preparation of P&S.* (1) The P&S shall include REA Contract Form 525 or 545, Notice and Instructions to Bidders, specifications for the required equipment of each exchange, provision for spare parts, and all other pertinent data needed by the bidder to complete its proposal.

(2) Preparation of the detailed equipment specifications shall be in accordance with the appropriate sections of the Telecommunications Engineering and Construction Manual (TE&CM) which are available from REA.

(c) *Submission of P&S.* (1) Two sets of the P&S shall be submitted to the GFR for REA review.

(2) REA will review the P&S and notify the borrower of approval or disapproval by letter. REA may withhold approval of the P&S for the reasons stated in § 1765.1(d).

(3) After approval of the P&S, one copy will be returned to the borrower.

§ 1765.28 Procurement procedures.

(a) *Sealed Competitive Bidding.* Sealed bidding of central office equipment shall be in two steps: The evaluation of technical proposals presented by the suppliers, and compliance with the sealed competitive bidding procedure set forth in § 1765.8(a).

(1) *Solicitation of Bids.* (i) After REA approval of the specifications and equipment requirements, the borrower shall send "Notice and Instructions to Bidders" to suppliers selected by the borrower with central office equipment included in the current "List of Materials Acceptable for Use on Telephone Systems of REA Borrowers." This "Notice" may also be sent to suppliers of foreign equipment currently accepted by REA as meeting REA technical standards. With REA written approval, the "Notice" may also be sent to suppliers of central office equipment accepted for field trial.

(ii) The "Notice" must set forth the method of evaluating bids and must require the submission of equipment lists and traffic calculations with the bids.

(iii) REA Contract Forms 525 or 545 shall be used, except that the "Notice" shall state that prior to the bid opening a technical session will be conducted with each supplier to resolve any questions related to the technical proposal submitted by the supplier. The suppliers' technical proposals should be requested for presentation 30 days in advance of the bid opening to enable sufficient time to make the technical evaluation.

(iv) The borrower shall solicit bids as set forth in § 1765.8(a)(2). The "Notice" shall be sent to at least three prospective bidders. A copy of the "Notice" and a list of such bidders shall be sent to REA.

(v) At the request of an invited supplier, the borrower shall provide two copies of the approved P&S.

(2) *Technical Sessions.*

(i) The borrower shall schedule individual technical sessions by the suppliers, notify each supplier of its scheduled date and time, and request the following be available at the technical session:

(A) Lists of equipment, material and software.

(B) Proposed floor plan.

(C) Power and heat dissipation calculations.

(D) List of exceptions to plans and specifications.

(E) Protection and grounding requirements.

(F) Description of how office administration, maintenance and traffic collection are handled with step-by-step examples and printouts.

(G) Explanation of processor and/or memory expansion required to meet ultimate size.

(H) Description of how special equipment such as loop tests, volunteer fire alarm circuit, line load control, etc., will function.

(I) Description of method for translating initial office administration information into machine language, and proposal as to whether it will be done by the owner or by the supplier.

(J) Proposed software license agreement, and a supplier's statement as to whether it is of a form that has previously been accepted by the borrower and approved by the Administrator.

(K) Any other items pertinent to the technical proposal.

(ii) The borrower shall review in detail all exceptions to the P&S. No exceptions will be accepted unless all bidders are notified, in writing, of the change in the specifications and permitted to incorporate the change in their proposal.

(iii) The borrower shall review the proposed software licensing agreement. If the proposed software licensing agreement has not been approved previously by REA, the borrower must obtain REA approval prior to accepting a proposal from that supplier. If prior REA approval is in doubt, REA is to be consulted. Refer to § 1765.28(c) for software license agreement requirements.

(iv) If the technical proposal is not responsive, the borrower shall notify the

supplier, in writing, that its proposal will not be given further consideration and why.

(v) Changes in the P&S resulting from the technical sessions shall be subject to REA's review and approval.

(vi) After evaluation of the technical proposals, sealed bids shall be solicited from only those bidders whose technical proposals meet the P&S requirements. When fewer than three bidders are qualified to bid, REA approval must be obtained to proceed. Generally, REA will grant this approval if all suppliers currently listed in the "List of Materials Acceptable for Use on Telephone Systems of REA Borrowers" were invited to submit technical proposals.

(vii) The borrower shall invite the GFR to attend the technical sessions.

(3) *Bidding and Award of Contract.* (i) All bids must be completed, dated, and signed prior to submission.

(ii) The bid opening and award of contract shall be conducted in accordance with the procedure set forth in § 1765.8(a).

(iii) The spare parts bid shall always be priced separately and added to the base bid when determining the low bidder.

(b) *Single Source Negotiated Procurement.* If REA has approved the borrower's request to procure central office equipment through single source negotiation in accordance with requirements contained in § 1765.26(f), the borrower shall proceed in accordance with this subsection. REA approval will be conditioned upon the borrower obtaining prices in line with current competitive prices.

(1) After REA approval of the P&S and equipment requirements, the borrower shall send two complete copies of the approved P&S to the supplier requesting that a proposal be submitted.

(2) The borrower shall schedule a time and date for a technical session by the supplier and request that the items listed in § 1765.28(a)(2)(i) be available at the technical session. In addition to these items, the supplier shall be requested to provide a description of the exact differences in hardware and software between the borrower's existing equipment and the proposed equipment so that the borrower can determine spare parts interchangeability, need for retraining, and the compatibility of administration of the old and new equipment.

(3) Changes in the P&S resulting from the technical session shall be subject to REA's review and approval.

(4) Based on the results of the technical evaluation, the supplier shall

complete, date and sign its proposal prior to submission to the borrower.

(5) The borrower's engineer shall make a detailed review of the proposal and make a recommendation to the borrower.

(6) The following shall be sent to REA for review and approval:

(i) A copy of the engineer's recommendation to the borrower, and

(ii) Evidence of acceptance of the proposal by the borrower, such as a certified copy of the board resolution, or a letter to REA signed by an authorized corporate official.

(7) Upon REA approval of the proposal, three copies of the contract shall be prepared with all specifications and proposal documents, and performance bonds, to be executed by the supplier and borrower.

(8) The three complete, executed contracts shall be sent to the REA Area Engineering Branch Chief for approval.

(9) If REA approves the contract, one copy will be returned to the borrower and one copy will be sent to the supplier.

(10) Installation of the central office equipment and materials provided under REA Contract Form 545 may be made in accordance with Subpart G, if applicable, or by an approved Force Account Proposal (FAP).

(c) *Software License Agreement.* (1) For a software licensing agreement to be made a part of an REA-financed central office equipment contract, the agreement must be accepted by the borrower and approved by REA. REA will approve only those licensing agreements which do not impair loan security or REA central office system service objectives specified by REA in REA Form 522 "General Specification for Digital, Stored Program Controlled Central Office Equipment." Therefore, licensing agreements will not be approved if they impair the borrower's ability to operate, maintain and administer the equipment within the borrower's system, or limit the borrower's or REA's ability to sell the equipment. Generally, this will require that the borrower have the following rights under the licensing agreement:

(i) The borrower may reproduce or copy the software and related material in limited quantity solely for its use in operating, maintaining, and administering the equipment, and also for training purposes.

(ii) The borrower may reuse the equipment and software at another location within its system.

(iii) The borrower and REA, or its assignees, may transfer the software licensing agreement with the equipment if the equipment is sold.

(iv) In the event the licensor becomes unwilling or unable to furnish software support, the licensor shall upon written request of the borrower provide with greatest possible dispatch all software back-up documentation, including proprietary information. The borrower shall be permitted full use of and shall become owner of all software and documentation as long as the equipment is operational.

(v) The software licensing agreement shall include a software warranty of indefinite duration against errors and incompleteness.

(d) *Contract Amendments.* (1) The general requirements for contract amendments are set forth in § 1765.11.

(2) Equipment contract amendments shall be prepared on REA Contract Form 238, Construction or Equipment Contract Amendments.

(e) *Additions.* When additions to existing central office equipment are required:

(1) A proposal shall be requested from the supplier.

(2) The borrower shall prepare a plan containing an outline of the proposed use of the equipment, the proposal from the supplier and an estimate of the installation cost, and submit it to the GFR.

(3) After REA approval of the supplier's proposal and the borrower's plan, the purchase may be made using REA Contract Form 545 or, when applicable, the procedures contained in Subpart G.

(4) If the purchase is to be made by contract, three executed copies of the contract with attachments are to be submitted to the REA.

(5) Installation of the central office equipment and materials procured by REA Contract Form 545 may be made in accordance with Subpart G, if applicable, or by an approved FAP.

(f) *Preinstallation Conference.* The borrower will arrange and conduct a preinstallation conference, if desirable, attended by the borrower, its engineer, equipment installers, and if possible the GFR, prior to the beginning of the installation of the central office equipment.

§ 1765.29 Closeout documents.

Closeout of REA Contract Form 525, Central Office Equipment Contract (Including Installation), and REA Contract Form 545, Central Office Equipment Contract (Not Including Installation), shall be conducted as follows:

(a) *Contract Amendments.* The borrower shall prepare and arrange for the execution and submission to REA of any required contract amendments so

that any changes in either contract will have been approved prior to the time the closeout documents are prepared. REA Contract Form 238, Construction or Equipment Contract Amendment, shall be used for this purpose.

(b) *Taxes.* Under the terms of REA Contract Forms 525 and 545, the bid prices do not include any amounts which are or may be payable by the bidder or the owner on account of taxes imposed upon the sale, purchase or use of equipment, material and software covered by the contracts. If any such tax is paid by the bidder, the contract requires that the amount is to be stated separately on all invoices and paid by the owner.

(c) *Acceptable Tests.* The borrower will perform acceptable tests in accordance with guidelines contained in the applicable TE&CM sections, as a part of the partial closeout and final closeout of REA Contract Form 525.

(d) *Grounding System Audit.* A grounding system audit shall be performed and found acceptable, by authorized representatives of the contractor and purchaser, prior to placing a central office or remote switching terminal into full service operation. This audit is to be conducted in accordance with guidelines contained in the applicable sections of REA Form 525 "General Specification of Digital, Stored Program Controlled Central Office Equipment."

(e) *Partial Closeout Procedure.* Under conditions set forth in REA Contract Form 525, a contractor may, when approved by the borrower, receive payment in full for central offices and their respective associated remote switching terminals upon completion of the installation without awaiting completion of the project. Where the contractor is to receive such payment, the procedure contained in the applicable sections of REA Contract Form 525 shall be followed. In addition to complying with the appropriate partial closeout procedure contained in REA Contract Form 525, the borrower shall:

(1) Assemble and distribute the closeout documents specified in Appendix B.

(2) Submit one copy of Form 754 to REA with the FRS, requesting the remaining funds due the contractor on the central offices and associated remote switching terminals involved.

(3) On receipt of the advance of loan funds, make prompt payment to the contractor.

(f) *Final Contract Closeout Procedure.* The documents required for the final closeout of the central office equipment

contracts, REA Contract Forms 525 and 545, are listed in Appendix B, which also indicates the number of copies and their distribution. The procedure to be followed is outlined below:

(1) The borrower shall:

(i) Immediately following completion of the last central office equipment installation, arrange with the contractor's installer, connecting company (where necessary), and the GFR for performance of the acceptance tests of offices not previously tested. The date for testing should be established so that the installer will not be required to return to the site for the sole purpose of assisting in these tests. Acceptance tests shall be performed within 45 days of completion of the installation, unless otherwise requested in writing by the contractor and approved in writing by the borrower.

(ii) When the acceptance tests have been satisfactorily completed and the contractor has corrected all the discrepancies:

(A) Prepare and assemble the documents listed in Appendix B, Documents Required to Close Out Central Office Equipment Contracts.

(B) Notify the GFR that the project is ready for final REA inspection.

(iii) Make the documents listed in Appendix B available for GFR review on the date of final inspection.

(iv) Distribute the documents as indicated in Appendix B, including submission to the GFR of all documents required by REA.

(2) The documents required and the procedure to be used for equipment purchased and/or installation made using the method of minor construction are set forth in Subpart G.

(g) Final payment shall not be made until REA has approved the closeout documents.

§§ 1765.30-1765.35 [Reserved]

Subpart D—Outside Plant: Major Construction by Contract

§ 1765.36 General.

(a) This subpart implements and explains the provisions of the loan documents (as defined in 7 CFR Part 1758) setting forth the requirements and procedures to be followed by borrowers for outside plant major construction by contract with loan funds. Terms used in this subpart are defined in § 1765.2 and REA Contract Form 515.

(b) The contract method for major construction is described in § 1765.5(h).

§ 1765.37 Plans and Specifications (P&S).

(a) General. (1) Prior to the

preparation of P&S for the construction project:

(i) A review shall be made of the outside plant requirements, and the Loan Design (LD) shall be revised to reflect any needed changes (See § 1765.3).

(ii) Deviations from the approved LD (7 CFR Part 1749) must be approved by REA (See § 1765.3).

(2) The standard REA specifications required for construction of outside plant facilities are:

(i) REA Form 515a (Bulletin 345-150)—Specifications and Drawings for Construction of Direct Buried Plant.

(ii) REA Form 515c (Bulletin 345-151)—Specifications and Drawings for Conduit and Manhole Construction.

(iii) REA Form 515d (Bulletin 345-152)—Specifications and Drawings for Underground Cable Installation.

(iv) REA Form 515f (Bulletin 345-153)—Specifications and Drawings for Construction of Pole Lines and Aerial Cables.

(v) REA Form 515g (Bulletin 345-154)—Specifications and Drawings for Service Entrance and Station Protector Installation.

(b) Preparation of Plans and Specifications. Each set of plans and specifications shall include:

(1) REA Contract Form 515, "Telephone System Construction Contract (Labor and Materials)."

(2) The specifications described in paragraph (a)(2) of this section as specified by the borrower in the REA Contract Form 515.

(3) Description of special assembly units and guide drawings, if any.

(4) Key, detail, and cable layout maps.

(5) REA Contract Form 787

"Supplement A to Construction Contract, REA Contract Form 515," when the borrower proposes to provide any materials to the contractor. The borrower shall not order materials for a contractor without REA approval. In such cases the borrower must attach Form 787 and a "List of Owner's Materials on Hand" and/or a "List of Materials Ordered by Owner but Not Delivered" to contract Form 515 (See § 1765.38(f)).

(c) Submission of Plans and Specifications to REA. (1) Two sets of the plans and specifications and one copy of the "Check List for Review of Plans and Specifications," REA Form 553, OMB No. 0572-0062, signed by the borrower's engineer, shall be furnished to the GFR.

(2) If REA approves the P&S, REA will return one set to the borrower.

§ 1765.38 Procurement procedures.

(a) Sealed Competitive Bidding—(1) Qualifying Bidders. (i) The borrower is responsible for selecting qualified contractors to bid on the project. See § 1765.8(a)(3). Questions relating to bidders' qualifications shall be resolved prior to the pre-bid conference.

(ii) REA Form 274 or its equivalent, supplemented by REA Form 276, shall be used for the submission of bidders' qualifications for all types of construction and for the required information on the bidder and subcontractors.

(2) Invitations to Bid. The borrower shall solicit bids as set forth in § 1765.8(a)(2). Invitations shall be sent to at least 6 prospective bidders.

(3) Pre-Bid Conference. (i) Representatives of the borrower and its engineer shall be present at the pre-bid conference at the time and place designated in the Notice to Bidders. The GFR will usually attend the pre-bid conference.

(ii) The purpose of the pre-bid conference is to acquaint the bidders with the scope and special considerations of the project and to clarify any concerns the bidders may have.

(iii) No proposals shall be considered from bidders that do not attend the pre-bid conference unless the bidder has been notified by the engineer that such bidder's attendance has been waived. Attendance can be waived if, in the judgment of the engineer, the bidder would gain no additional understanding of the construction project by attending the pre-bid conference.

(iv) Minutes of the pre-bid conference shall be prepared by the engineer and distributed to all potential bidders.

(v) When fewer than three bidders have been qualified to submit bids, REA written approval must be obtained to proceed with requesting bids.

(4) Bid Openings. (i) Bid openings and award of contract shall be conducted in accordance with § 1765.8(a).

(ii) Two copies of the assembly unit sections of the apparent lowest responsive bid accepted by the borrower shall be sent to REA.

(b) Negotiated Bidding. (1) Competitive bids are not required for outside plant construction that is estimated to cost less than \$200,000 labor and materials. The borrower shall obtain REA approval of the plans and specifications before it selects the contractor for negotiated bidding.

(2) The procedures to be followed are

contained in § 1765.8(b) and (3) and (4) below.

(3) *Negotiation Conference.* (i) The borrower shall schedule a conference to be attended by representatives of the engineer, the borrower and the contractor selected for negotiations. The GFR shall be invited to this conference.

(ii) The purpose of the negotiation conference is to acquaint the contractor with the scope and special considerations of the project and to answer any questions.

(iii) Notes covering the negotiation conference shall be prepared and distributed to all attendees.

(4) Two copies of the assembly unit sections of the negotiated contractor's proposal shall be sent to the GFR for approval.

(c) *Contract Amendments.* The borrower shall prepare contract amendments in accordance with § 1765.11 on REA Contract Form 526, Construction Contract Amendment.

(d) *Subcontracts.* The REA requirements for subcontracts and the procedures to be followed are set forth in § 1765.9.

(e) *Preconstruction Conference.* The borrower shall conduct a conference, attended by the borrower, contractor, subcontractors, resident engineer, and the GFR, prior to the beginning of cable placement, to resolve any questions pertaining to the construction. Results of the conference shall be provided to each conference participant (See § 1765.10).

(f) *Owner-Furnished Materials.* When the borrower furnishes materials under REA Contract Form 787, Supplement A to Construction Contract, these steps shall be followed:

(1) Materials on hand to be furnished by the borrower shall be released to the contractor at the start of construction. Materials on order but not received shall be provided to the contractor as they become available. The contractor shall give the borrower a written receipt for all such materials delivered.

(2) Materials on hand, until released to the contractor, shall be covered by fire and either wind-storm or extended coverage insurance, exclusive of materials stored in the open and not within 100 feet of any building. Poles, wherever stored, shall be covered by fire insurance. All insured values must be at least 80 percent of the cash value of the property insured.

(3) Subject to adjustment at the time of final settlement, the contractor on its monthly invoices shall credit the borrower, at the prices quoted in Form 787, Supplement A, for all materials furnished by the borrower and installed by the contractor during the preceding month.

(4) Any materials furnished by the borrower remaining as surplus at the completion of construction shall be returned to the borrower. For such materials, the borrower shall furnish a written receipt to the contractor and credit the contractor at the prices quoted in Supplement A.

(g) *Changes or Corrections in Construction.* (1) When changes or corrections in construction are necessary, and the cost of such changes or corrections is properly chargeable to the borrower, the borrower's engineer shall prepare and sign four copies of a Construction Change Order, REA Form 216, obtain borrower's approval and forward the four copies to the contractor. Receipt of the executed Construction Change Order by the contractor will constitute authorization to proceed with the changes or corrections.

(2) When the changes or corrections have been made, the contractor shall complete the form, itemizing the costs in accordance with the terms of the contract, and return three copies to the borrower's engineer. A copy of each change order shall be attached to each copy of the construction inventory required to close out the contract.

§ 1765.39 Closeout documents.

(a) *General.* The borrower shall be responsible for preparing the closeout document with, if necessary, the assistance of the GFR.

(b) *Documents Required.* Appendix C lists the documents required to closeout the Form 515 construction contract.

(c) *Closeout Procedure.* (1) After construction has been completed in accordance with the plans and specifications, and acceptance tests have been made, the borrower shall arrange the time for a final inspection to be made by the borrower's engineer, the contractor, the GFR and a representative of the borrower.

(2) After inspection, the final inventory documents shall be prepared and distributed as indicated on Appendices C and D. The documents listed for REA shall be submitted to the GFR. The approved final inventory is considered the final contract amendment. An extension to the contractor's bond is required when the total inventory price exceeds the maximum contract by more than 20 percent.

(3) Final payment shall not be made until REA has approved the closeout documents.

§§ 1765.40-1765.45 [Reserved]

Subpart E—Outside Plant Major Construction by Force Account

§§ 1765.46-1765.55 [Reserved]

Subpart F—Purchase and Installation of Special Equipment

§ 1765.56 General.

(a) This subpart implements and explains the provisions of the Loan Documents (as defined in 7 CFR Part 1758) setting forth the requirements and the procedures to be followed by borrowers in purchasing and installing special equipment financed with loan funds.

(b) Terms used in this subpart are defined in § 1765.02 and REA Contract Forms 397 and 398.

(c) Special equipment purchased with loan funds must be included in the List of Materials Acceptable for use on telephone systems of REA borrowers (See Bulletin 344-2) and meet REA's standards and specifications (See 7 CFR Part 1772) unless otherwise approved by REA.

(d) Borrowers must obtain REA review and approval of the LD for their telephone systems. Applications of special equipment not included in an approved LD must be submitted to the GFR for REA review and approval. See § 1765.3.

(e) REA Form 397 and applicable specifications shall be used for the purchase of special equipment for major construction on a furnish and install basis.

(f) REA Form 398 and applicable specifications shall be used for the purchase of equipment for major construction on a furnish only basis. The procedures provided in Subpart G, if applicable, or a FAP approved by REA may be used for the installation of special equipment purchased with a Form 398 contract.

(g) For special equipment purchases for minor construction, the borrower may at its option use the Methods of Minor Construction procedures contained in Subpart G of the purchase procedures contained in this Subpart F.

(h) Some types of special equipment software. See Subpart C for REA software licensing requirements.

§ 1765.57 Contracts and specifications

(a) Special Equipment Contract, REA Form 397 shall be used to purchase equipment on a furnish and install basis.

(b) Special Equipment Contract, REA Form 398 shall be used to purchase equipment on a furnish only basis.

(c) The appropriate equipment specifications must accompany the selected contract form.

(1) Each specification consists of performance specifications, installation requirements (if applicable) and application engineering requirements.

(2) REA specifications for the Special Equipment Contract are listed in 7 CFR Part 1772.

(3) Where specifications are not available, general engineering requirements and functional specifications shall be prepared by the borrower and approved by REA.

§ 1765.58 Purchasing special equipment.

(a) *General.* (1) Equipment purchases are categorized as initial equipment purchase, equipment additions to existing systems and new system additions.

(i) An initial equipment purchase is a first time purchase by a borrower of a complete system of special equipment.

(ii) Equipment additions to existing systems are additions of components to complete operating systems to increase system capacity and require components made by the manufacturer of the existing system.

(iii) New system additions are purchases of complete systems of special equipment where the purpose could be accomplished either with equipment of the same type and manufacture as other complete operating systems in the borrower's system, or with complete systems of special equipment from other manufacturers.

(2) For initial equipment purchases which qualify as major construction, proposals shall be received from three or more sellers of equipment of different manufacturers.

(3) For equipment additions to increase the capacity of existing systems, the borrower may negotiate for equipment of a specific type and manufacture. The REA approval to negotiate in this instance is not required if these additions were specifically described in the LD approved by REA.

(4) For new system additions, the borrower may request REA approval to negotiate for additional equipment for the purpose of standardization on a system basis, provided REA approved the procurement method used for the initial equipment purchase. REA approval to negotiate must be obtained before release of the P&S to the seller.

(5) REA will not approve negotiation with a seller of non-domestic equipment for the purpose of standardization, because such a purchase does not meet the "Buy American" provision.

(6) REA recommends that borrowers include installation by the seller for initial installations of special equipment which qualify as major construction.

(7) Special equipment may be installed by the borrower if it has qualified personnel and test equipment available to install the equipment and make the required acceptance tests, and written approval is given by REA.

(8) Installations, whether by the borrower or the seller, must meet the installation requirements of Form 397 specifications. A copy of the appropriate acceptance tests results must be attached to the closeout documents of work order summary.

(9) Detailed considerations and guidelines for the preparation of the specifications for the various applications of special equipment can be found in appropriate REA Telecommunications Engineering and Construction manuals.

(10) The borrower must obtain authorization from the Federal Communications Commission (FCC) to construct and operate radio transmitting equipment. Evidence of FCC authorization is required for REA contract approval. Where required, the borrower must obtain approval of state regulatory bodies regarding tariffs and related matters.

(b) *Procurement Procedures—(1) General.* The following are the procurement procedure steps required for the purchase of special equipment by borrowers.

(2) *Initial Equipment Purchase.* (i) The borrower prepares the P&S and sends two copies to the GFR for approval.

(ii) REA approves the P&S in writing (or notifies the borrower of any reason for withholding approval).

(iii) The borrower obtains proposals from three or more sellers.

(iv) The borrower selects the proposal to be accepted and sends notification of this selection supported by a summary of all proposals and an engineer's recommendation to REA for approval.

(v) REA approves the proposal selection in writing (or notifies the borrower of any reason for withholding approval).

(vi) The borrower sends three executed contracts including specifications to REA for approval.

(vii) After REA approval of the contract, one copy will be returned to the borrower and one copy will be sent to the seller.

(3) *Equipment Additions to Existing Systems.* Purchase procedures for equipment additions to existing systems are the same as for initial system purchase except that the borrower may negotiate for equipment of a specific

type and manufacture instead of obtaining proposals from three or more sellers.

(4) *New System Additions.* (i) The borrower prepares the P&S and sends two copies to the GFR for approval. The borrower may request REA approval to negotiate for the purpose of standardization on a system basis.

(ii) REA notifies the borrower in writing of REA's decision as to whether to approve the P&S and whether to allow the borrower to negotiate for specific equipment.

(iii) The remainder of the purchase procedures for new system additions is the same as for initial equipment purchase.

(c) *Contract Amendments.* (1) The general requirements for contract amendments are set forth in § 1765.11.

(2) The borrower shall prepare, arrange for the execution by all parties, and submit to REA any required amendments to special equipment contracts, so that any changes in the contract will have been submitted prior to or simultaneously to the time closeout documents are submitted. REA Form 238, Construction or Equipment Contract Amendment shall be used for this purpose.

(d) *Closeout Procedures—(1) Acceptance Tests for Form 397.* (i) Immediately upon completion of the installation and alignment of the equipment, the borrower shall arrange with the contractor's installer and the GFR for acceptance tests.

(ii) The contractor shall perform the inspections and tests outlined in the specifications.

(iii) The contractor shall furnish to the borrower, in writing, the results of all the tests as required in the specifications. The borrower will analyze the test results and determine whether the performance of the equipment meets the contract specifications.

(2) *Acceptance Tests for Form 398.* (i) Upon completion of the installation and alignment of the equipment (under this contract the installation alignment will be by other than the seller) the borrower shall perform all the inspections and tests outlined in the specifications.

(3) *Closeout Documents.* (i) When the acceptance tests have been completed and all deficiencies found have been corrected, the borrower shall:

(A) Assemble the documents listed in Appendix F which are required for the closeout of the special equipment contract.

(B) Notify the GFR that the installation is ready for final acceptance.

(C) Make available for the GFR the documents listed in Appendix F.

(ii) The GFR reviews the final documents and distributes all the documents as indicated in Appendix F.

(iii) Final payment shall not be made until REA has approved the closeout documents.

§ § 1765.59—1765.65 [Reserved]

Subpart G—Methods of Minor Construction

§ § 1765.66—1765.80 [Reserved]

Subpart H—Construction Certification Program

§ § 1765.81—1765.99 [Reserved]

BILLING CODE 3410-15-M

DOCUMENTS REQUIRED TO CLOSOUT CENTRAL
OFFICE EQUIPMENT CONTRACT

FORM FURNISHED BY REA	DESCRIPTION	USE WITH		PREPARED BY		TOTAL NUMBER OF COPIES	DISTRIBUTION		
		REA FORM 525	REA FORM 545	CONTRACTOR	ENGINEER		BORROWER	CONTRACTOR	REA
238	CONSTRUCTION OR EQUIPMENT CONTRACT AMENDMENT (Submit to REA for approval, if required, before following documents.)	x	x	-	x	3	-	-	3
754	CERTIFICATE OF COMPLETION AND CERTIFICATE OF CONTRACTOR AND INDEMNITY AGREEMENT (If submitted, Form 744 is not required.)	x	-	x	x	4	2	1	1
517	RESULTS OF ACCEPTANCE TESTS (Prepare and distribute copies immediately upon completion of the acceptance tests of each central office.)	x	-	-	x	2	1	1	-
752a	CERTIFICATE OF COMPLETION - NOT INCLUDING INSTALLATION	-	x	-	x	3	1	1	1
744	CERTIFICATE OF CONTRACTOR AND INDEMNITY AGREEMENT (Where contractor is manufacturer, this form may be submitted in lieu of REA Forms 224 and 231.)	x	-	x	-	2	1	-	1
224	WAIVER AND RELEASE OF LIEN (Two copies from each supplier)	x	-	x	-	2	1	-	1
231	CERTIFICATE OF CONTRACTOR	x	-	x	-	2	1	-	1
213	CERTIFICATE (BUY AMERICAN)	x	x	x	-	2	1	-	1
	SWITCHING DIAGRAM, as installed	x	x	x	-	3	2	-	1
	SET OF DRAWINGS (Each set to include all the drawings required under the Specification REA Form 522)	x	x	x	-	3	3	-	-

DOCUMENTS REQUIRED TO CLOSOUT CONSTRUCTION OF BUILDINGS

FORM FURNISHED BY REA	DESCRIPTION	USE WITH		PREPARED BY		NUMBER OF COPIES	DISTRIBUTION			
		CONTRACT	FORCE ACCOUNT	CONTRACTOR	ARCHITECT		BORROWER	REA	ARCHITECT	CONTRACTOR
238	CONSTRUCTION OR EQUIPMENT CONTRACT AMENDMENT (Submit to REA for approval, as required.)	x	-	-	x	3	-	3	-	-
181	*CERTIFICATE OF COMPLETION (Contract Construction)	x	-	-	x	3	1	1	-	1
181a	CERTIFICATE OF COMPLETION (Force Account Construction)	-	x	-	x	2	1	1	-	-
231	CERTIFICATE OF CONTRACTOR	x	-	x	-	2	1	1	-	-
224	WAIVER AND RELEASE OF LIEN (2 copies from each supplier)	x	-	x	-	2	1	1	-	-
213	CERTIFICATE (BUY AMERICAN)	x	-	x	-	1	1	-	-	-
284	STATEMENT OF ARCHITECT'S FEE	x	x	-	x	3	1	1	1	-
---	INVENTORY - LIST MATERIALS AND SERVICES FURNISHED BY BORROWER UPON WHICH ARCHITECTURAL SERVICES WERE FURNISHED. SHOW COST (See Form 284)	x	-	-	-	3	1	1	1	-
---	INVENTORY - LIST MATERIALS AND SERVICES FURNISHED BY BORROWER UPON WHICH ARCHITECTURAL SERVICES WERE NOT PERFORMED. SHOW COST.	x	x	-	-	3	1	1	1	-
**	"AS-BUILT" PLANS AND SPECIFICATIONS	x	x	-	-	3	1	1	1	-
---	GUARANTEES, WARRANTIES, BONDS, OPERATING OR MAINTENANCE INSTRUCTIONS, ET CETERA.	x	-	x	-	1	1	-	-	-

* Cost of Materials and Services Furnished by Borrower not to be Included in Total Cost on Form 181.

** When only Minor Changes Were Made During Construction, Two Copies of a Statement to that Effect from the Architect Will be Accepted in Lieu of the "As-Built" Plans and Specifications.

REA FORM NUMBER	DESCRIPTION	NUMBER OF COPIES	PREPARED BY		DISTRIBUTION	
			ENGINEER	CONTRACTOR	BORROWER	CONTRACTOR
724	FINAL INVENTORY	4	x	-	1	1
724a	FINAL INVENTORY	4	x	-	1	1
	CONTRACTOR'S BOND EXTENSION (When required)	3	-	x	1	1
281	TABULATION OF MATERIALS FURNISHED BY BORROWER	4	x	-	1	1
213	CERTIFICATE ("BUY AMERICAN")	1	-	x	1	-
	LISTING OF CONSTRUCTION CHANGE ORDERS	2	x	-	-	-
224	WAIVER AND RELEASE OF LIEN (Two copies from each supplier)	2	-	x	1	1
231	CERTIFICATE OF CONTRACTOR	2	-	x	1	1
527	FINAL STATEMENT OF CONSTRUCTION	4	x	-	1	1
	REPORTS ON RESULTS OF ACCEPTANCE TESTS	2	x	-	1	1
	SET OF FINAL STAKING SHEETS	1	x	-	1	-
	TABULATION OF STAKING SHEETS	1	x	-	1	-
	CORRECTION SUMMARY (legible copy)	1	x	-	1	-
	TREATED FOREST PRODUCTS INSPECTION REPORTS OR CERTIFICATES OF COMPLIANCE (Prepared by inspection company or supplier)	1	-	-	1	-
	FINAL KEY MAP (When applicable)	3	x	-	2	1
	FINAL CENTRAL OFFICE AREA AND TOWN DETAIL MAPS	3	x	-	2	1

* After approval of inventory by REA, one will be returned to borrower.

STEP-BY-STEP PROCEDURE
FOR CLOSING OUT TELEPHONE CONSTRUCTION CONTRACT
LABOR AND MATERIALS, REA FORM 515

SEQUENCE STEP: NO.:	WHEN	BY	PROCEDURE
1.	Prior to completion of construction	Borrower's Engineer	Receives instructions from the GFR concerning the closeout procedure.
2.	Upon completion of construction	Borrower's Engineer	Prepares the following: 3 sets of Key Maps, when applicable, 1 of which shows work done under the construction contract marked with red pencil 3 sets of Detail Maps, 1 of which shows work done under the construction contract marked with red pencil 1 copy of Tabulation of Staking Sheets 1 copy of tentative Final Inventory, REA Forms 724, 724a 1 copy of tentative Tabulation, REA Form 281, if borrower supplied part of the materials. 3. After construction has been completed and acceptance tests made Borrower's Engineer Forwards letter to the borrower with copies to the GFR stating that the project is ready for final inspection. 4. Upon receipt of letter from borrower's engineer GFR Promptly arranges with borrower, borrower's engineer, and contractor for final inspection of construction. It is contemplated that final inspections will be made on sections of line as construction is completed, leaving a minimum amount to be inspected at this time. 5. When required REA Field Accountant Makes an examination of borrower's construction records, and audits REA Form 281, if borrower supplied part of the materials.

SEQUENCE STEP: NO.:	WHEN	BY	PROCEDURE
11.	Upon completion of inspection	Borrower's Engineer	Prepares or obtains all the closeout documents listed in Appendix C. Makes distribution of the copies of the documents as indicated in Appendix C. Forwards the documents for REA to the GFR.
12.	After reviewing final documents	REA GFR	Reviews documents and distributes copies as indicated in Appendix C.
13.	After signing final inventory	Borrower	Prepares and submits Financial Requirement Statement, REA Form 481 requesting amount necessary to make final payment due under contract.
14.	On receipt of final advance	Borrower	Promptly forwards check for final payment to contractor.

SEQUENCE STEP: NO.:	WHEN	BY	PROCEDURE
6.	Inspection date scheduled	Borrower's Engineer	Shall have the following documents available for the GFR: 1 set of "as constructed" Key Maps (when applicable) 1 set of "as constructed" Detail Maps 1 copy of the List of Construction Change Orders 1 set of Final Staking Sheets 1 copy of Tabulation of Staking Sheets 1 copy of Treated Forest Products Inspection Reports or Certificates of Compliance 1 copy of tentative Final Inventory REA Forms 724, 724a 1 copy of tentative Tabulation, REA Form 231, if borrower furnished part of material. 1 copy of Report on Results of Acceptance Tests
7.	During inspection	Borrower's Engineer	Issues Instructions to contractor covering corrections in construction found during inspection by GFR in the company of the borrower's engineer and the contractor or his/her representative.
8.	During inspection	Contractor	Corrects defects in construction on basis of instructions from the borrower's engineer. The corrections should proceed closely behind the inspection in order that the borrower's engineer can check the corrections before leaving the system.
9.	During inspection	Borrower's Engineer	With GFR inspects and approves corrected construction.
10.	During inspection	Borrower's Engineer	Marks inspected areas on the Key Map, if available, otherwise on the Detail Maps.

DOCUMENTS REQUIRED TO CLOSEOUT
SPECIAL EQUIPMENT CONTRACTS

Form Furnished By REA	Description	No. of Copies		Prepared By			Dis- tribution		
		Form 397	Form 398	Contractor	Engineer	Form 397	Contractor	Engineer	REA
238	CONSTRUCTION OR EQUIPMENT CONTRACT AMENDMENT (If required, submit to REA for approval before other closeout documents.)	3	3	-	x	-	-	x	3
396	CERTIFICATE OF COMPLETION - SPECIAL EQUIPMENT CONTRACT (Including Installation)	3	-	-	x	-	-	x	1
396a	CERTIFICATE OF COMPLETION - SPECIAL EQUIPMENT CONTRACT (Not Including Installation)	-	3	-	x	-	-	x	1
744	CERTIFICATE OF CONTRACTOR AND INDEMNITY AGREEMENT	2	-	x	-	-	-	-	1
213	CERTIFICATE (BUY AMERICAN)	1	1	x	-	x	-	-	-
---	Report in writing, including all measure- ments and other information required under Part II of the applicable specifications	2	2	x	-	-	-	x	1
---	Set of maintenance recommendations for all equipment furnished under the contract	1	1	x	-	-	-	x	-

Dated: August 9, 1988.

Harold V. Hunter,
Administrator.

[FR Doc. 88-18369 Filed 8-17-88; 8:45 am]

BILLING CODE 3410-15-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 563c and 571

[No. 88-687]

Investment Portfolio Policy and Accounting Guidelines; Extension of Comment Period

Date: August 12, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule; proposed statement of policy; extension of comment period.

SUMMARY: The Federal Home Loan Bank Board (the "Board") is extending to September 20, 1988 the comment period on its proposed rule and statement of policy regarding investment portfolio policy and accounting guidelines for insured institutions.

DATE: Comments must be received on or before September 20, 1988.

ADDRESS: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G St. NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Julie A. Gerschick, Professional Accounting Fellow, (202) 331-4583, or W. Barefoot Bankhead, Professional Accounting Fellow, (202) 331-4585, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006; or Gary Jeffers, Staff Attorney, (202) 377-6457, or Julie L. Williams, Deputy General Counsel, (202) 377-6459, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On June 9, 1988, the Board proposed to adopt a rule and a statement of policy pertaining to investment portfolio policy and accounting guidelines for institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"). 53 FR 23244 (June 21, 1988). The proposal is intended to clarify that insured institutions must account for securities held for investment, sale, and/or trading in

accordance with generally accepted accounting principles ("GAAP"). The proposal was published with a sixty-day comment period which would expire on August 22, 1988.

The Board has determined, as set forth in a notice of public hearing published elsewhere in the Notices section of the Federal Register, to hold a public hearing on this proposal on September 13, 1988. In order to give the public adequate opportunity to respond to issues discussed at this hearing the Board is hereby extending the comment period on the proposal. The comment period will now expire on September 20, 1988. The Board notes that comments already submitted in response to the proposal need not be resubmitted during the extension of the comment period. The Board will consider all comments submitted in reaching a final decision, including the views expressed at the public hearing; it encourages all interested parties to submit their comments on all aspects of the proposed rule and statement of policy.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-18781 Filed 8-17-88; 8:45 am]

BILLING CODE 6720-01-M

12 CFR Parts 563c and 571

[Docket No. 88-686]

Investment Portfolio Policy and Accounting Guidelines

Date: August 12, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of public hearing.

SUMMARY: This notice announces a public hearing on the proposed rule and the proposed statement of policy issued by the Federal Home Loan Bank Board ("Board") to clarify that insured institutions must account for securities held for investment, sale and/or trading in accordance with generally accepted accounting principles ("GAAP").

DATE: The public hearing will be held Tuesday, September 13, 1988, 9:00 a.m.-5:00 p.m.

ADDRESS: Written requests to participate in the public hearing must be mailed to the Secretary, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, or hand delivered to the same address between the hour of 9:00 a.m. and 5:00 p.m. Monday through Friday, and received no later than 5:00 p.m. on August 29, 1988.

HEARING LOCATION: The Federal Home Loan Bank Board's Amphitheater, 2nd Floor, 1700 G Street, NW., Washington, DC 20552.

Copies of the Notice of Proposed Rule/Proposed Statement of Policy and any comments or other materials relating to the proposed rule and proposed statement of policy will be made available in the Federal Home Loan Bank Board's reading room at 801 17th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Julie A. Gerschick, Professional Accounting Fellow, (202) 331-4583, or Barefoot Bankhead, Professional Accounting Fellow, (202) 331-4585, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006; or Gary Jeffers, Staff Attorney, (202) 377-6457, or Julie L. Williams, Deputy General Counsel, (202) 377-6459, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On June 9, 1988, by Resolution No. 88-460, the Board proposed an amendment to its rules and proposed a statement of policy on the accounting for securities held for investment, sale and/or trading in accordance with GAAP. Based on the controversial nature of the proposed rule/proposed statement of policy, the Board wishes to hold a public hearing to permit interested persons to express their views on the proposed rule/proposed statement of policy or any aspect of the proposals. The Board proposed a 60-day comment period that is scheduled to expire on Monday, August 22, 1988. That comment period is to be extended until Tuesday, September 20, 1988. See Board Res. No. 88-687, published elsewhere in the Proposed Rules section of the Federal Register.

Participants in the hearings are invited to address all aspects of the proposed rule/proposed statement of policy. In addition, the Board specifically invites oral comments, as well as supplementary or independent written submissions, studies or analyses with regard to the following matters:

- (1) The anticipated impact of the proposals on the investment policies and investment strategies of insured institutions;
- (2) The anticipated effect on insured institutions of the documentation requirements of the proposals;
- (3) The need to modify or further refine the terms "intent" and "ability" as used in the proposals;

(4) The proper role of the insured institution's board of directors in investing activities, *i.e.*, merely policy making and broad oversight versus more frequent monitoring and review of management activities.

Persons wishing to participate in the hearing should send a written request to participate in the hearings to the Secretary, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, to be received no later than the close of business August 29, 1988. Requests may be hand delivered between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday. This requirement is necessary in order to provide sufficient time to acknowledge receipt of the notices and inform participants of the schedule of the hearing. It will also enable alternative arrangements to be made for the hearing if more persons are expected to attend than the Amphitheater can accommodate.

The request to participate in the hearing must include the following information.

(1) The name, address, and business telephone number of the participant; (2) the entity that the participant is representing; (3) a brief summary of the participant's remarks; and (4) the preference, if any, for the time which the participant wishes to testify. While the Board will attempt to accommodate the participants as to time, it cannot guarantee that it will be able to honor all such preferences. Moreover, the Board may allocate the available time according to the various issues raised in the proposals. Participants should, therefore, be selective in identifying the topics they wish to address.

Depending on the number of requests received, participants may be limited to the length of their oral presentations; they will be advised in writing of the time scheduled for their presentation. Also, depending on the number of requests received, the Board may decide to conduct the hearing over more than one day, although it does not contemplate such an extension at this time.

The Board reserves the right to limit the number of participants and to select, in its discretion, those persons who may make oral presentations if it receives more requests for participation than may be accommodated in the time available. Additionally, the Board anticipates establishing panels of participants for presentations. If it does so, the Board will take steps to ensure that the designated witnesses or panels constitute a representative sample of the types of participants and of the views of those who wish to participate.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-18782 Filed 8-17-88; 8:45 am]
BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-71-AD]

Airworthiness Directives: BFGoodrich (or Former Company Name Sargent Industries, Pico Division) 7-Man Lifteraft, P/N 100102-()

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to BFGoodrich 7-Man Lifterafts, P/N 100102-(), which would require replacement of certain inflation gas cylinders. This proposal is prompted by a report that three cylinders were found which had leaked to O psi while in the packed state. This condition, if not corrected, could lead to a situation where the raft would not be available for use in an aircraft ditching. These liferafts could be used in any type aircraft.

DATES: Comments must be received no later than October 12, 1988.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-71-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from BFGoodrich Aircraft Evacuation Systems, 3414 South Fifth Street, Phoenix, Arizona 85040. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Transport Airplane Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter S. Eierman, Aerospace Engineer, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Transport Airplane Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5336.

SUPPLEMENTARY INFORMATION: Comments Invited

Interest persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-71-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: The FAA has received a report of three instances where P/N 630104-205 cylinders, used to inflate BFGoodrich 7-man liferafts, P/N 100102-(), were found to have leaked to O psi while in the packed state. All three instances were discovered at the time of liferaft overhaul. The cylinders had cracks which caused the leakage to occur. The problem resulted from the high lead content of the aluminum used as the cylinder material. This condition is limited to certain lots of cylinders. The material specification has since been changed to prevent the use of high lead content aluminum.

The continued use of the cylinders from the affected lots could result in a liferaft which would not inflate properly and, therefore, may not be available in the event of an aircraft ditching.

The FAA has reviewed and approved BFGoodrich Alert Service Bulletin No. 130101-25A-203, dated March 29, 1988. This service bulletin lists serial numbers of all the cylinders which must be replaced, and provides instruction for this action.

Since this condition is likely to exist on any BFGoodrich liferaft using a cylinder from the lots manufactured from high lead content aluminum, an AD

is proposed to require replacement of the unacceptable cylinders in accordance with the service bulletin previously mentioned.

It is estimated that approximately 100 cylinders would be affected by this AD, that it would take approximately 3 manhours per cylinder to remove and replace an unsatisfactory cylinder, and that the average labor cost would be \$40 per manhour. BFGoodrich will provide replacement cylinders at no charge. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$12,000.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per liferaft (\$120). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The proposed amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

BFGoodrich (Sargent Industries, Pico Division): Applies to BFGoodrich (or former company name Sargent Industries, PICO division) 7-man liferafts, P/N 100101-(). (This liferaft is approved under Technical Standard Order C70). Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To eliminate cylinders which may leak due to the material used in their fabrication, accomplish the following:

A. Inspect the liferafts to determine the part number (P/N). If the liferaft contains a P/N 630104-205 cylinder with a serial number listed in BFGoodrich Alert Bulletin NO. 130101-15A-203, dated March 29, 1988, the cylinder must be replaced prior to further flight, in accordance with that service bulletin.

Note: The BFGoodrich service bulletin lists the raft P/N and S/N on which the cylinders were originally installed.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Transport Airplane Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the BFGoodrich Aircraft Evacuation Systems, 3414 South Fifth Street, Phoenix, Arizona 85040. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

Issued in Washington, DC, on August 11, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-18739 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-100-AD]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require ultrasonic inspection and overhaul, if necessary, of wing landing gear beam outboard end fittings. This proposal is

promoted by the report of a fracture of a left wing landing gear beam outboard end fitting on one airplane. This condition, if not corrected, could result in separation of the outboard end of the landing gear beam with possible damage to control cables or hydraulic lines in the area of the landing gear beam.

DATES: Comments must be received no later than October 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-100-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Transport Airplane Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of

the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-100-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

One operator of a Boeing Model 747 series airplane reported a fracture of a left wing landing gear beam outboard end fitting on an airplane which had accumulated 63,700 flight hours and 15,900 flight cycles. Examination of the fractured fitting revealed that all cracks started at corrosion pits in the fitting bore, and crack propagation was caused by stress corrosion. Other operators have reported corrosion in the fitting attach bolt holes, and faying surface of the end fitting. This condition, if not corrected, could lead to separation of the outboard end of the landing gear beam, with possible damage to control cables or hydraulic lines in the area of the landing gear beam.

The FAA has reviewed and approved Boeing Service Bulletin 747-57-2244, dated March 31, 1988, which defines the specific inspection procedures to be used to check for cracks in the wing landing gear support beam outboard end fitting on certain Boeing Model 747 airplanes. The service bulletin also describes a repair and rework method that terminates the need for those inspections.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require ultrasonic inspection and repair, as necessary, of the wing landing gear support beam outboard end fittings on certain Boeing Model 747 series airplanes in accordance with the service bulletin previously mentioned.

It is estimated that 192 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$76,800.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1)

involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-57-2244, dated March 31, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of a wing landing gear beam outboard end fitting with possible damage to control cables or hydraulic lines in the area of the landing gear beam, accomplish the following:

A. Prior to the accumulation of 30,000 flight hours, or 8 years in service, whichever occurs first, or within the next 18 months after the effective date of this AD, whichever occurs later, ultrasonically inspect the wing landing gear beam outboard end fittings for cracks or corrosion in accordance with Boeing Service Bulletin 747-57-2244, dated March 3, 1988.

B. If no cracking or corrosion is found, repeat the inspection required by paragraph A., above, at intervals not to exceed 18 months.

C. If cracking or corrosion is found, prior to further flight, remove the wing landing gear beam outboard fitting and rework in accordance with Boeing Service Bulletin 747-57-2244, dated March 31, 1988.

D. Terminating action for the inspections required by paragraphs A. and B., above, consists of rework of the wing landing gear beam outboard fittings in accordance with

Boeing Service Bulletin 747-57-2244, dated March 31, 1988.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Transport Airplane Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Transport Airplane Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Transport Airplane Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 11, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-18740 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ANM-12]

Proposed Alteration of Transition Area; Vernal, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to add 1,200 foot transition area at Vernal, Utah, to provide controlled airspace to encompass a new departure procedure. This action does not change the existing 700 foot transition area.

DATES: Comments must be received on or before October 3, 1988.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-12, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT:

Bob Brown, ANM-535, Federal Aviation Administration, Docket No. 88-ANM-12, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-12". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace in the vicinity of Vernal, Utah. Additional controlled airspace is required to accommodate a new departure procedure for the Vernal Airport to protect aircraft climbing in the Vernal (VFR) Very High Frequency Omnidirectional Range Station (VOR) holding pattern.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW RATES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Vernal, Utah [Revised]

That airspace extending upward from 700 feet above the surface within 9.5 miles northeast and 5 miles southwest of the Vernal VOR 157° and 337° radials, extending

from 10 miles northwest to 18.5 miles southeast of the VOR; that airspace extending upward from 1,200 feet above the surface within 14.5 nautical miles northeast and 9.5 miles southwest of the Vernal VOR 157° and 337° radials, extending from 13 miles northwest to 22 miles southeast of the VOR; excluding those portions within the VOR federal airways.

Issued in Seattle, Washington, on July 23, 1988.

F. E. Davis,

*Assistant Manager, Air Traffic Division,
Northwest Mountain Region.*

[FR Doc. 88-18741 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 178 and 192

Exportation of Used Self-Propelled Vehicles

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by adding a new part concerning the exportation of used self-propelled vehicles. It sets forth the requirements for lawful exportation of such vehicles as well as the penalties and liabilities for attempted unlawful exportation. These regulations are necessary to implement certain provisions of the Motor Theft Law Enforcement Act of 1984 and the Trade and Tariff Act of 1984 dealing with the unlawful exportation of used self-propelled vehicles. A notice was published previously concerning this matter. After consideration of comments received in response to the notice, certain modifications were made. The modified proposal is being republished for further comments.

DATE: Comments must be received on or before October 17, 1988.

ADDRESS: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, Room 2324, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments relating to the information collection aspects of the proposal should be addressed to Customs, as noted above, and also to the Office of Information and Regulatory Affairs, Attention: Desk Officer for U.S. Customs Service, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: Harriett D. Blank, (202) 566-5746.

Operational Aspects: Louis Razzino, (202) 566-2140.

SUPPLEMENTARY INFORMATION:**Background**

The Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98-547), amended the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*), by adding a new section 627 (19 U.S.C. 1627), relating to the unlawful importation or exportation of certain vehicles and equipment. Subsequently, the Tariff Act of 1930 was further amended by section 205 of the Trade and Tariff Act of 1984 (Pub. L. 98-573), which also added a new section 627, similar to section 627 of Pub. L. 98-547. The amendments made by Pub. L. 98-573 are set forth as 19 U.S.C. 1627a.

The new sections provide for civil penalties of not more than \$10,000 for each violation of knowingly importing, exporting, or attempting to import or export (1) any stolen self-propelled vehicle, vessel or aircraft; or (2) any self-propelled vehicle or part of a self-propelled vehicle from which the vehicle identification number (VIN) has been removed, obliterated, tampered with or altered. Also, any violation of 19 U.S.C. 1627 or 1627a subjects the vehicle, vessel, aircraft, or part thereof to seizure and forfeiture. In addition, any person attempting to export a used self-propelled vehicle must present both the vehicle and a document describing the vehicle, which includes the VIN, to Customs before lading if the vehicle is to be transported by vessel or aircraft, or before export if the vehicle is to be transported by rail, highway, or under its own power. Failure to comply with this provision subjects the violator to a civil penalty of \$500 for each violation.

Public Law 98-547 and Public Law 98-573 were enacted in response to the ever-increasing incidents of the theft of motor vehicles and other conveyances and their exportation from the U.S. It is estimated that approximately 200,000 stolen vehicles are exported each year, primarily by professional thieves or people employed by them to effect the exportation. The recovery rate for stolen vehicles decreased from 86% in 1967 to 62.9% in 1984.

There is also a growing problem concerning the exportation of vehicle components. The parts are often shipped in sealed containers, making detection more difficult.

The legislation concerning the exporting and importing of self-propelled vehicles, other conveyances or parts thereof with altered vehicle

identification numbers established penalties for violations and provided for the seizure and forfeiture of the vehicles, other conveyances or parts. It is expected that these sanctions will both deter the exportation of stolen vehicles and improve the recovery rate of those vehicles which are stolen. The legislation also directed that regulations be prescribed by the Secretary of the Treasury with regard to the procedures for the lawful exportation of used self-propelled vehicles.

Prior Proposal

On March 17, 1987, Customs published a notice in the *Federal Register* (52 FR 8308), proposing regulations to implement 19 U.S.C. 1627 and 1627a. It was proposed to establish a new Part 192, Customs Regulations (19 CFR Part 192).

Sections 192.1 through 192.4 of Subpart A of Part 192 would set forth the procedures for the lawful exportation of used self-propelled vehicles. They would require a person attempting to export such a vehicle to furnish documentation sufficient to prove to Customs that the vehicle is lawfully owned by the exporter. This documentation would include the vehicle identification number. Definitions of "self-propelled vehicle," "used," "ultimate purchaser," and "export," all terms used in Pub. L. 98-573, would be defined in § 192.1.

As proof of ownership of the vehicle by the exporter, Customs would accept an original certificate of title, or a memorandum of ownership, or a right of possession, or any other document sufficient to prove lawful ownership, such as a bill of sale or a sales invoice. In lieu of an original document, Customs would accept a certified copy.

It was also proposed that the exporter must present 2 facsimiles of the original document or certified copy. Customs would authenticate both facsimile documents, one of which would remain in the possession of the exporter, and the other of which will be collected by Customs for forwarding to the National Automobile Theft Bureau (NATB), on the same day. While Customs would not retain copies of the documentation relating to the exportation, the NATB would enter the VIN and other information on the exported vehicles into their database for recordkeeping purposes.

Authentication by Customs would include the stamping of the facsimile documents with the date of their presentation. As to exportations at a land border, where the vehicle is to be transported by rail, highway, or under its own power, it was proposed that the

date would most likely be the date of exportation. At sea borders, where the vehicle is to be transported by vessel, or at airports, where the vehicle is to be transported by aircraft, the date of presentation of the facsimile documents could often precede the actual date of exportation.

Discussion of Comments

Ten comments were received in response to the original proposal. A discussion of these comments and our responses follow:

Comment: One commenter suggested that the proposed regulations should be included in the Export Administration Regulations (15 CFR), because the exporting public will be confused if export regulations are placed in the Customs Regulations (19 CFR).

Response: The statute on which the proposed regulations were based is concerned with both the importation and exportation of vehicles. Congress has seen fit to enact the statute in title 19 of the U.S. Code. Accordingly, Customs believes that the subject regulations properly belong in the Customs Regulations (19 CFR).

Comment: One commenter suggested that because 19 U.S.C. 1627 and 19 U.S.C. 1627a were enacted simultaneously, currently exist side by side, and cover the same subject matter, clarification is necessary as to which statute is being implemented by the proposed regulations.

Response: We do not agree. The legal effect of both statutes is identical and, therefore, regulations implementing both statutes would be identical.

Comment: A Florida-based commenter noted that there is an overlap between the subject legislation and Florida State statutes. Accordingly, the commenter believed that the Federal legislation is unnecessary.

Response: Customs disagrees. One intent of the legislation was to enable Customs, which is a presence at all points of exportation, to assume part of the responsibility for curtailing the exportation of stolen vehicles. Similar state and federal requirements may co-exist as long as state legislation does not conflict with the federal requirements.

Comment: Two commenters suggested that proposed § 192.2(a), Customs Regulations, which provided that a person attempting to export a used self-propelled vehicle, be more specific with regard to the place of presentation of the vehicle and documentation.

Response: Customs agrees. Accordingly, proposed § 192.2(a) is being amended to state that

presentation shall occur at the port of exportation.

Comment: Several commenters suggested that because all 50 states are title states with regard to automobiles, trucks, motorcycles and buses, Customs might want to require that original or certified copies of Certificates of Title be presented for these vehicles. The possibility of forgeries would be decreased if originals or certified copies were required.

Response: We agree. Accordingly, the language in proposed § 192.2(b) being amended to state that in the case of automobiles, trucks, motorcycles and buses, original or certified copies of Certificates of Title and two facsimiles of the original or certified copy shall be presented.

Comment: One commenter suggested that because not all vehicles encompassed by proposed Part 192 are assigned vehicle identification numbers (VINs), the proposed regulations should not categorically require that the document which must be presented to Customs describing the vehicle include the VIN.

Response: We agree. Accordingly, language in the proposed regulation is being changed to state that the document presented to Customs may include the product identification number rather than the VIN, if the vehicle for which the document is presented does not have a VIN.

Comment: It was suggested that in order to enhance law enforcement capabilities, the regulations provide a time lag between the presentation of the documentation evidencing lawful ownership and the actual exportation of the vehicle.

Response: We agree. Proposed § 192.2(c) is, accordingly, amended to provide for presentation of documents and vehicles at the port of exportation at least three days before actual exportation, regardless of the specific mode of exportation.

Comment: One commenter suggested that proposed § 192.3, covering penalties, should be redrafted so that, in addition to attempted exportations, it also covers actual accomplished exportations in violation of the regulatory requirements.

Response: We agree. Accordingly, proposed § 192.3 is expanded to state that a \$500 penalty will be assessed against both an exporter who has already exported a vehicle without complying with the requirements set forth in Part 192 and an exporter attempting to export a vehicle without complying with the regulations.

Comment: A commenter suggested that Customs be required in all cases to

compare the VIN on the documentation purported to evidence lawful ownership with the number on the vehicle itself.

Response: We disagree. Such a requirement would place an impossible burden on Customs and it would not be an efficient use of our limited personnel, facilities and resources.

Comment: It was suggested that the regulations specify the contents of the authentication.

Response: Customs disagrees. We believe that the content of the authentication is basically on operational issue and that, therefore, the regulations need not set forth the specifics of the authentication.

Comment: Several commenters stated that Customs should be required to send the VIN to an agency that maintains data on stolen vehicles such as the NCIC (the FBI's National Crime Information Center) through a direct computer hook-up.

Response: Customs might do this. However, we believe that the regulations should not contain any specific requirements regarding what Customs will do with the information it obtains. It is necessary for the agency to maintain flexibility in this area.

Conclusion

After careful consideration of all the comments received and further review of the matter, it has been determined to republish the proposal with the modifications noted and to allow interested persons an additional opportunity to submit comments on the proposal. Commenters on the original proposal need not resubmit their comments. They will be reconsidered along with any new comments received in response to this notice.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are submitted timely to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2324, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a

substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management of Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for U.S. Customs Service, with copies to the U.S. Customs Service at the address previously specified.

The collection of information in the regulation is in section 19 CFR 192.2. This information is required by Customs pursuant to 19 U.S.C. 1627 and 1627a to prove that used self-propelled vehicles that are being exported out of the U.S. are lawfully owned by the exporter. Customs will be providing the documentation it collects certifying the exporters' ownership of the exported vehicles to the National Automobile Theft Bureau which would maintain the records. The likely respondents are individuals exporting vehicles, business or other for-profit organizations and small businesses or organizations.

Estimated total annual reporting and/or recordkeeping burden: 5333 hours.

Estimated average annual burden per respondent and/or recordkeepers: 2½ hours depending on the circumstances.

Estimated number of respondents and recordkeepers: 2000

Estimated annual frequency of responses: 16.

Part 178, Customs Regulations (19 CFR Part 178), which lists the information collections contained in the regulations and control numbers assigned by OMB would be amended accordingly if this proposal is adopted.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 178

Reporting and recordkeeping requirements.

19 CFR Part 192

Customs duties and inspection,
Imports, Exports, Vehicles.

Proposed Amendments

It is proposed to amend Chapter I of Title 19, Code of Federal Regulations (19 CFR Chapter I), by adding a new Part 192 to read as follows:

PART 192—EXPORT CONTROL

Sec.

192.0 Scope.

Subpart A—Exportation of Used Self-Propelled Vehicles

192.1 Definitions.

192.2 Requirements for exportation.

192.3 Penalties.

192.4 Liability of carriers.

Authority: 19 U.S.C. 66, 1624, 1627, 1627a, 1648a.

§ 192.0 Scope.

This part sets forth regulations pertaining to procedures for the lawful exportation of used self-propelled vehicles and the penalties and liabilities incurred for failure to comply with any of the procedures. This part also sets forth regulations concerning controls exercised by Customs with respect to the exportation of certain merchandise.

Subpart A—Exportation of Used Self-Propelled Vehicles

§ 192.1 Definitions.

The following are general definitions for the purposes of Subpart A:

Export. "Export" refers to the transportation of merchandise out of the U.S. for the purpose of being entered into the commerce of a foreign country.

Self-propelled vehicle. "Self-propelled vehicle" includes any automobile, truck, tractor, bus, motorcycle, motor home, self-propelled agricultural machinery, self-propelled construction equipment, self-propelled special use equipment, and any other self-propelled vehicle used or designed for running on land but not on rail.

Ultimate purchaser. "Ultimate purchaser" means the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a self-propelled vehicle for purposes other than resale.

Used. "Used" refers to any self-propelled vehicle the equitable or legal title to which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

§ 192.2 Requirements for exportation.

(a) *Basic requirements.* A person attempting to export a used self-

propelled vehicle shall present to Customs, at the port of exportation, both the vehicle and a document describing the vehicle, which includes the Vehicle Identification Number or, when appropriate, the product identification number. Exportation of a vehicle will be permitted only upon compliance with these requirements. The person attempting to export the vehicle may employ an agent for the exportation of the vehicle.

(b) *Documentation required.* In the case of automobiles, trucks, motorcycles and buses, original or certified copies of Certificates of Title, and 2 facsimiles of the original or certified copy, shall be presented. In other cases, a certificate of title, memorandum of ownership, or right of possession, or any other document sufficient to prove lawful ownership, such as a bill of sale or a sales invoice, or a certified copy of any of these documents, as well as 2 facsimiles of the original or certified copy, shall be presented.

(c) *When presented.* If the vehicle is to be transported by vessel or aircraft, the documentation and vehicle must be presented at least 3 days prior to lading. If the vehicle is to be transported by rail, highway, or under its own power, the documentation and vehicle must be presented 3 days prior to exportation of the vehicle.

(d) *Authentication of documentation.* Customs shall authenticate both facsimile documents, one of which shall remain in the possession of the exporter and one of which shall be collected by Customs. Authentication will include the stamping of the facsimile documents with the date of presentation of the documents. The authenticated facsimile document will be the only acceptable evidence from the exporter of compliance with the requirements of this section.

§ 192.3 Penalties.

(a) A \$500 penalty shall be assessed against an exporter attempting to export a vehicle without complying with the requirements set forth in this Part of the regulations.

(b) A \$500 penalty shall be assessed against an exporter who has exported a vehicle without complying with the requirements set forth in this Part of the regulations.

§ 192.4 Liability of carriers.

Under the provisions of 46 U.S.C. 91, the vessel master is charged with the responsibility for presenting a true manifest. If used vehicles are not included on the manifest or are inaccurately described thereon, a

liability of not more than \$1,000 nor less than \$500 will be incurred.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. It is proposed to amend § 178.2 by inserting the following in the appropriate numerical sequence according to the section number under the column indicated:

§ 178.2 Listing of OMB Control Numbers

19 CFR section	Description	OMB control No.
Part 192.....	Exportation of Used Self-Propelled Vehicles.	1515-0157

Michael H. Lane,
Acting Commissioner of Customs.

Approved: April 20, 1988.

Francis A. Keating, II,
Assistant Secretary of the Treasury.
[FR Doc. 88-18560 Filed 8-17-88; 8:45 am]
BILLING CODE 4820-02-M

31 CFR Part 103

Proposed Amendments to the Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping Requirements by Casinos

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Treasury is proposing sixteen enumerated amendments to the Bank Secrecy Act regulations. The proposals, if adopted as a final rule, would substantially modify the reporting and recordkeeping requirements regarding casinos.

DATES: Deadline for comments: October 17, 1988.

ADDRESS: Send comments to: Amy G. Rudnick, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: John M. Zoscak, Jr., Attorney-Adviser, Office of the Assistant General Counsel (Enforcement), Department of the Treasury, Room 2000, 1500 Pennsylvania

Avenue NW., Washington, DC 20220, (202) 566-2914.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. No. 91-508, (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951 *et seq.*, and 31 U.S.C. 5311-5324), authorizes the Secretary of the Treasury to require financial institutions to file reports and keep records that the Secretary determines have a high degree of usefulness in criminal, tax, and regulatory matters. Pursuant to 31 U.S.C. 5312(a)(2)(U), the Secretary has designated certain casinos as "financial institutions" for purposes of the Bank Secrecy Act. See 31 CFR 103.11(g)(7). The Secretary has imposed particular reporting and recordkeeping requirements of these casinos. See 31 CFR 103.22(a)(2) and 103.36, respectively.

The Internal Revenue Service, which has examination and enforcement jurisdiction over casinos in New Jersey and Puerto Rico, has found that testing for compliance with the current reporting and recordkeeping requirements is difficult because "audit trails" do not always exist.

Treasury proposes herein new rules which are designed to assure full compliance with the Bank Secrecy Act (hereinafter, "the Act") by casinos and to facilitate compliance review. The rules proposed are set forth in sixteen amendments to the Bank Secrecy Act regulations.

Amendment No. 1

Amendment No. 1 continues to cite Pub. L. No. 91-508 as the statutory authority for 31 CFR 103.

Amendment No. 2

Amendment No. 2 would slightly modify the meaning of the term "casino" in § 103.11(g)(7). The modifications are designed to: (a) Affirm that licensed casinos in Puerto Rico and the territories and possessions of the United States are subject to the Act and regulations thereunder; (b) define the concept of "gross annual gaming revenue"; and (c) clarify the point in time that a casino becomes subject to the Act and regulations, based on the amount of its gross gaming revenue.

Amendment No. 3

Amendment No. 3 would clarify the reporting requirements found in § 103.22(a)(2). New § 103.22(a)(2) makes it clear that reportable currency transactions are those that involve either total cash in or total cash out exceeding \$10,000, and not a combination of cash in and cash out exceeding such amount, nor an offsetting of cash in and cash out

transactions against each other, as has been mistakenly believed by some casinos. Section 103.22(a)(2) (i) and (ii) provides some examples of cash in and cash out transactions, respectively. These are to be considered examples only, and not a comprehensive or exhaustive list of all cash in and cash out transactions. They have been added in response to requests for delineations of types of currency transactions that occur at casinos. It should be noted that exchanges of currency for currency, including foreign currency, are to be treated as both cash in and cash out transactions.

New § 103.22(a)(2)(iii) restates the rule already contained in current § 103.22(a)(2) that multiple currency transactions shall be treated as a single transaction, provided that the casino (a) has knowledge that (b) they are by or on behalf of any person and (c) when aggregated, exceed \$10,000 (d) during a "gaming day" (which is defined in proposed Amendment No. 16, below). Casinos have complained that, given the frequently swift and nearly frenzied activity of players on crowded casino floors, it often is very difficult to determine if and when a particular customer has engaged in multiple transactions that meet the over-\$10,000 threshold. New § 103.22(a)(2)(iii) responds to this concern by clarifying that a casino will be deemed to have knowledge of multiple same-day transactions by or on behalf of the same person which when aggregated exceed \$10,000, not only if (a) an employee, director, officer, sole proprietor, or partner, has knowledge of the multiple transactions, but also if (b) the various books, records, and similar documents, and information retained in a casino's automated data processing system or any existing manual system, which are maintained by the casino pursuant to any Federal, State, or local law or regulation or in the regular course of business, contain information that such multiple transactions have occurred. Because most casino players gamble at more than a single table in a gaming day, requiring casinos to check their internal information, books and records, and similar material is an effective way of assuring that multiple transactions are aggregated and reported.

The knowledge which an employee, director, officer, or partner obtains may be acquired in any manner. Thus, for example, if a casino supervisor is told by an employee that a player has purchased \$6,000 in chips for cash and later the same gaming day the supervisor personally observes the same player purchase another \$6,000 in chips for cash, the supervisor, and thus the

casino, would have the requisite knowledge that the two currency transactions are (a) by the same person and (b) result in cash totalling more than \$10,000 (c) in one gaming day. Similarly, if a casino supervisor learns from the casino's computer that a customer has purchased chips at a certain gaming table earlier in the gaming day for \$6,000 in cash, and later that day observes the same customer purchase another \$6,000 in chips for cash, the supervisor, and thus the casino, is deemed to have knowledge of the multiple transactions.

Amendments No. 4 and No. 5

Amendment No. 5 is intended to assure that the requirements imposed on a casino, when it learns that multiple currency transactions are to be treated as a single one, can be reasonably complied with. Under Amendment No. 4, the existing § 103.27 would become new paragraph (a), and would apply to all transactions that it currently applies to, except those set forth in new paragraph (b).

Amendment No. 5 would add new paragraph (b), which would apply only to certain multiple currency transactions in casinos. Specifically, if the amount of a cash buy in, purchase of chips, or cash bet at a casino would cause all of a customer's cash in transactions to be treated as a single transaction because the casino obtains the knowledge described in proposed § 103.22(a)(2)(iii) solely pursuant to the casino's books, records, computer information, etc., the casino would be required to verify and record the identifying information described in new paragraph (a) (i.e., name, address, social security number, etc.). However, unlike the requirement in new paragraph (a) to verify and record the information "before concluding" the transaction, this requirement would be to verify and record the information "within a reasonable period of time after" the casino acquires the knowledge that the multiple transactions must be treated as a single one. This requirement further provides that the information which is to be verified and recorded is that which is "then reasonably available." Customer information would be deemed reasonably available if the customer is reasonably available. Amendment No. 5 advises that special recordkeeping requirements (as set forth in Amendment No. 15, below) are imposed when paragraph (b) is applicable.

It is emphasized that this requirement is limited to the transactions particularly described. Therefore, all other cash in transactions that occur at areas other than the gaming floor, such as the so-

called cage, would be subject to the requirement of new paragraph (a) that the customer's information be obtained and verified "before concluding" such transactions. Also, the currency transaction that triggers the over-\$10,000 reporting threshold of § 103.22(a)(2), thereby making proposed § 103.27(a)(b) applicable, can only be a buy in, chip or token purchase, or cash bet.

Amendments No. 6, No. 7, and No. 8

Nine amendments and additions are proposed to the recordkeeping requirements found in § 103.36. Amendments No. 6 and No. 7 would require that, with respect to each deposit of funds, account opened, and line of credit extended, a casino record the name and address of the person involved, in addition to the person's social security number, which is currently required in paragraph (a). Treasury finds a valid law enforcement purpose in maintaining such additional information, in that it responds to the problem of customers providing false social security numbers. Moreover, Treasury finds this requirement no more burdensome than obtaining social security numbers.

Paragraph (a) is further modified by Amendment No. 8, which would require that the name and address of the person to be recorded pursuant to Amendments No. 6 and No. 7 be verified in the same manner that such information is currently required to be verified pursuant to § 103.27. Verification in these instances is believed necessary because of the very few opportunities available to obtain verification. Having such information on hand would aid in ascertaining complete and correct information when reports are required because of the operation of Amendment No. 3, above. Moreover, Treasury sees this requirement as no more burdensome than requiring the obtaining of social security numbers. Finally, this requirement helps assure that the list described in current paragraph (a) contains accurate information.

Amendment No. 9

Amendments No. 9 through No. 12 describe additional records that casinos would be required to make and retain under § 103.36(b). Amendment No. 9 would require, under new § 103.36(b)(9), a record of each person who has bought in at, bet, or purchased chips or tokens for, \$2,500 or more. Treasury recognizes that it is sometimes difficult to ascertain the point at which a player has bought in at, bet, or purchased chips for, \$2,500 or more through a series of transactions. Accordingly, the casino is required to use "reasonable diligence" in

determining whether the \$2,500 threshold for such transactions has been met. The reasonable diligence concept takes into account that tracking multiple buy ins, bets, and chip and token purchases at times is subjective and based on approximations. Still, where a player meets the \$2,500 threshold through multiple transactions at a single gaming table, or at several adjacent tables or during a single player rating period, Treasury would expect the requirements of the proposed amendment to be complied with, without exception.

The record required by Amendment No. 9 would include the player's name, permanent address, casino account number (which is defined in Amendment No. 16, below), and social security or taxpayer identification number; the date, time, and amount of the transactions; and the name or casino license number of the casino employee preparing the record. The name and address of the person must be verified, as provided in current § 103.27.

As with current § 103.36(a), a casino that has been unable to secure the social security or taxpayer identification number shall not be deemed to be in violation of the new rule if it has made a reasonable effort to secure the number and maintains a list containing the verified names and addresses of those persons from whom the number was not obtained. This list must be made available to the Secretary upon request.

Recognizing that most large casinos "rate" (i.e., monitor the gaming activity of) players at, or well below, the \$2,500 threshold, new § 103.36(b)(9) would exempt from its requirements those casinos which do, indeed, rate at least at \$2,500, provided the same information as required by this new rule is obtained and verified. Treasury views player rating documents, made in the normal course of business, as highly useful as a means of aggregating multiple currency transactions, to determine whether the transactions exceed \$10,000 and thus are required to be reported under § 103.22(a)(2). (See the Notice of Proposed Rulemaking set forth at 53 FR 11513). Treasury is concerned that casinos which do not rate their players at least at \$2,500, or do not rate at all, create no documents from which it might be determined whether reports have been properly filed. Therefore, new § 103.36(b)(9) would require such documentation.

Amendment No. 10

Amendment No. 10 would add a requirement that casinos maintain a record containing a list of each customer who is known by an alias, nickname,

"AKA", etc. The list would include the customer's name, aliases, nicknames, etc., permanent address, and social security or taxpayer identification number. Treasury considers such a list to be important, because customers sometimes use more than one name to identify themselves at casinos. The list would help in determining whether multiple currency transactions that occur by or on behalf of a single person, but under different names, have been aggregated as required under § 103.22(a)(2), and it would indicate whether currency transaction reports that are filed under different names pertain to a single person or to several persons. The list must be reported to the Secretary or the Commissioner of Internal Revenue upon request.

Amendment No. 11

In conducting Bank Secrecy Act compliance examinations pursuant to § 103.46, the Internal Revenue Service has reported to Treasury that it has detected some transactions which had been accounted for as transactions involving various non-currency monetary instruments, e.g., checks or traveler's checks. However, in these instances, extensive examinations have failed to reveal any business records that are able to identify whether the transactions in question actually involved non-currency monetary instruments, as opposed to currency.

In order to assure that transactions that are accounted for as involving non-currency monetary instruments indeed do not involve currency, Amendment No. 11 would add new § 103.36(b)(11) to require that a separate record be kept chronologically listing transactions of \$2,500 or more involving the following instruments: Personal checks, business checks, official bank checks, cashier's checks, third party checks, promissory notes, traveler's checks, and money orders. The list would include the type of instrument; the time, date, and amount of the transaction; the name of the drawee or issuer of the instrument; the name and address of the customer; all reference numbers (e.g., casino account number, personal check number, etc.); and the name or casino license number of the casino employee who conducts the monetary instrument transaction.

Amendment No. 12

New § 103.36(b)(12), which is proposed in Amendment No. 12, would require a record of wire transfers into or out of a casino on behalf of a customer in amounts of \$2,500 or more. Each

record would list the time, date, and amount of the transaction; the outside place of origination or destination of the transfer; any device, request, or instruction regarding the transfer; the name, address, and casino account number (if any) of the customer; and the name of casino license number of the casino employee who conducted the transaction.

Amendments No. 13 and No. 14

Amendments No. 13 and No. 14 respectively would add new § 103.36(b)(13) and 103.36(b)(14). Section 103.36(b)(13) would require casinos to retain a copy of its compliance program (described in Amendment No. 16, below). Section 103.36(b)(14) would require casinos to retain the records made through the operation of the denominational imprest system or the system provided when the denominational imprest system is exempted (also described in Amendment No. 16, below).

Amendment No. 15

Amendment No. 15 would add new § 103.36(b)(15), which was referred to in the discussion of Amendment No. 5, above. Under this proposed rule, every casino would be required to make a record that contains a list of each person which it could not identify solely as a result of the lag time that occurs between the time information is posted, logged in, inputted into a computer, etc., and the time it is ordinarily readable.

The interplay between this amendment and Amendment No. 5 is illustrated as follows. Assume that several casino employees at various times in a gaming day input the amounts of several buy ins of a player into the casino's computer system, which is capable of aggregating the amounts of multiple transactions and displaying the total. (Using computers to aid in Bank Secrecy Act compliance is discussed in Amendment No. 16, below). The player leaves the casino before the computer aggregates these transactions, which together exceed \$10,000, and the displays the total on the employee's computer screen. If a reasonable period of time elapses before a casino employee has knowledge through the computer that the buy ins have exceeded \$10,000, and the casino has not already obtained or verified the name and address under § 103.27(a), compliance with Amendment No. 5 would operate to relieve the casino of civil or criminal liability resulting from the casino's inability to obtain identifying information in a timely manner.

Under Amendment No. 15, the casino would be required to include the player on the special list. The list also would have to include any information that the casino has on the player (e.g., the player's nickname or address), the specific information that was not verified or recorded, and the time, date, and amount of the transaction or transactions that caused the operation of new § 103.27(b)(2). For purposes of these amendments, information which is available includes information which may be derived through casino accounts, prior reports filed on the same person pursuant to § 103.22(a), etc. For an ongoing duty imposed on casinos to obtain information which is required to be obtained and retained, but is not, see Amendment No. 16, below.

Amendment No. 16

Amendment No. 16 would add new § 103.54, titled "Special rules for casinos." In proposed paragraph (a) thereof, the development and implementation of internal programs to assure and monitor compliance with the Bank Secrecy Act and regulations thereunder would be mandated. The compliance programs would require, at a minimum, a system of internal controls to assure ongoing compliance, independent internal or external testing for compliance, training of casino personnel, the designation of an individual or individuals to assume the responsibility of day-to-day compliance, and the use of all information that is available to determine (a) at that point in time identifying information on a person must be obtained or verified, (b) when multiple currency transactions shall be treated as a single transaction under § 103.22(a)(2), and (c) whether any records required under the regulations must be made and retained. Additionally, the compliance programs for casinos which have automated data processing systems would have to provide for the development and use of computer programs to help assure Bank Secrecy Act compliance. The compliance programs would have to be in effect not later than 60 days after publication of the final rule.

Treasury's authority to require Bank Secrecy Act compliance programs can be found at section 5318(a)(2) of title 31 of the United States Code. The first four requirements of the compliance programs are the same as those contained in the mandatory compliance programs of other financial institutions for Bank Secrecy Act purposes. See, e.g., 12 CFR 21.21 and 12 CFR 208.14. The fifth requirement is imposed because some casinos have filed the reports required by § 103.22(a) with incomplete

information, even though complete information had been maintained in the casinos' computer systems; have failed to treat multiple currency transactions as a single one, even though player rating forms, when read together, showed that players had bought in for more than \$10,000 in cash during a single gaming day; and have failed to maintain complete records under § 103.36(b).

The sixth requirement merely requires casinos to use their automated data processing systems to their fullest extent to help assure compliance. It is stressed that this requirement is meant for casinos which have such systems in place and use them in the normal course of business. While casinos are not required to purchase or rent automated data processing systems for the sole purpose of enhancing their compliance with the Act and regulations, if they have a system in place that permits them to aggregate transactions, they must use that system for purposes of complying with the Act.

New § 103.54(a) concludes with the admonition that the development and implementation of compliance programs, standing alone, will not be considered a defense to any criminal or civil action under the Bank Secrecy Act or the regulations thereunder.

Amendment No. 16 would also add new § 103.54(b) to require each casino to use a "denominational imprest system" to account for certain transactions. As one facet of the denominational imprest system, each casino employee who engages in chip or currency transactions, with customers, other than those which occur at the gaming tables, would be responsible for a currency or a currency and chip inventory of a recorded dollar value and denominational composition at the beginning of his or her employment shift. The inventory at the end of the employment shift must also be recorded by dollar value and denominational composition.

Each transaction which involves the inventory must be accounted for chronologically and be recorded. The transactions would include those with another area of the casino, such as a "chip bank", or with a customer, such as a payment of credit with chips. The record will include the amounts involved, the denominations of currency involved, and a brief description of the transaction (e.g., "redemption of chips for one \$50 bill and two \$20 bills"). Paper tape, such as bank teller tape, can constitute the record. Also, the casino may develop a code to help expedite each transaction. By using a code, the casino can apply symbols, different

colors of ink, etc., to describe various transactions.

When a transaction with a customer involves \$2,500 or more in currency, the casino would also be required to secure, verify, and record certain identifying information, including social security number or taxpayer identification number. If such number cannot be obtained, the casino will not be deemed to be in violation of the rule, provided that it has made a reasonable effort to secure the number and maintains a list, made available to the Secretary upon request, of those persons from whom it was unable to obtain the number. The name or casino license number of the employee conducting the transaction must also be recorded.

The requirement to account for customer currency or chip transactions through a denominational imprest system may be exempted by the Secretary. In order to obtain an exemption, a casino must certify to the Secretary that all of its currency and chip transactions (other than those occurring at the gaming tables) in amounts greater than \$10,000 occur only at one or more stations, such as a cashier's window in the cage; that all of its currency and chip transactions in amounts between \$2,500 and \$10,000 inclusive occur only at one or more other stations and that certain information is recorded and verified at those stations; and that the stations handle no other transactions.

The denominational imprest system is necessary to assure that transactions accounted for as non-currency (e.g., chip transactions) are not currency transactions and to provide an audit trail presently not available for cage transactions. While significantly new requirements would be imposed for customer transactions, the added burden for internal transactions would be insignificant. Casinos already determine the denominational composition of the currency involved in the internal transactions covered by the proposed rule. The rule merely requires that a record be made of the denominational composition.

The denominational imprest system is similar to that used in banks, where a record is made of each transaction. Again, as with many banks, casinos may use a "teller tape" as the required record for each customer transaction covered by the rule. The system used by banks has proved to be greatly beneficial for Bank Secrecy Act enforcement purposes.

Amendment No. 16 would add new § 103.54(c) to define five terms which are used in the regulations and pertain to casinos. "Gaming day" would be

defined to mean essentially the normal business day of a casino. Moreover, no casino would be permitted to maintain separate gaming days for its various divisions, e.g., having a 24-hour period for cage transactions which is not the same period for gaming table transactions. "Customer" is all-inclusive and refers to each person involved in a transaction with a casino, regardless of whether that person engages in the casino's gaming activity. "Business year" means the taxable year, for purposes of subtitle A of title 26 of the United States Code, of the casino. "Machine-readable" means capable of being read by an automated data processing system. "Casino account number" includes all numbers by which a casino identifies a customer.

Finally, paragraph (d), alluded to in the discussion of Amendment No. 15 above, would also be added to new § 103.54. The new rule would place casinos under an ongoing duty to secure the missing information contained in the list prescribed by proposed § 103.36(b)(15).

Executive Order 12291

This proposed rule, if adopted, would not be a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of \$100 million or more. It will not result in a major increase in costs or prices for consumers, individuals industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on these requirements should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503,

Attention: Desk Officer for the Departmental Offices, Department of the Treasury. Copies of such comments should also be submitted to the Department at the address previously specified.

The collections of information in this regulation are in 31 CFR 103.22, 103.33, 103.36, and proposed new § 103.54. This information is required by the Treasury Department to trace movements of large volumes of cash in casinos. The information will be used in the enforcement of Federal income tax laws and the investigation of criminal activities such as money laundering and drug trafficking. The respondents and recordkeepers are business or other for-profit institutions.

Estimated total annual recordkeeping burden: 12,254 hours.

Estimated number of recordkeepers: 23.

Estimated average annual burden per recordkeeper: 533 hours.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

Comments.

Treasury requests written comments from all interested persons concerning the proposed amendments. Oral comments will not be considered unless and until reduced to writing. All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. The Treasury Department will not recognize any materials or comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in the comments. All comments submitted will be available for public inspection during the hours that the Treasury is open to the public. The Treasury Library is located in Room 5030, 1500 Pennsylvania Avenue NW., Washington, DC. Appointments must be made to view the comments. Persons wishing to view the comments submitted should contact the Office of Financial Enforcement at (202) 566-8022 for an appointment. Treasury requests comments on all aspects of this proposal, but is particularly interested in specific information about the anticipated increased costs that each individual proposed requirement would cause.

List of Subjects in 31 CFR Part 103

Authority delegation, Banks and banking, Currency, Foreign Banking, Investigation, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendments

For the reasons set forth in the preamble, 31 CFR Part 103 is proposed to be amended as follows:

PART 103—[AMENDED]

1. The authority citation for Part 103 would continue to read as follows:

Authority: Pub. L. No. 91-508, Title I 84 Stat. 1114 (12 U.S.C. 1829b, 1951-1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. No. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5324).

2. It is proposed that § 103.11(g)(7) be revised to read as follows:

§ 103.11 Meaning of terms.

(g) * * *

(7)(i) *Casino*. A casino or gambling casino duly licensed to do business as a casino or gambling casino in the United States and having gross annual gaming revenue in excess of \$1,000,000. The term includes the principal headquarters and every domestic branch or place of business of the casino.

(ii) For the purposes of this paragraph, "gross annual gaming revenue" means the gross gaming revenue received by a casino, without regard to winnings paid to players, during either the previous business year or the current business year of the casino. A casino or gambling casino which is a casino for purposes of this part solely because its gross annual gaming revenue exceeds \$1,000,000 during its current business year, shall not be considered a casino for purposes of this part prior to the time in its current business year that its gross annual gaming revenue exceeds \$1,000,000.

3. It is proposed to amend § 103.22 by revising paragraph (a)(2):

§ 103.22 Reports of currency transactions.

(a) * * *

(2) Each casino shall file a report of each transaction in currency, involving either cash in or cash out, of more than \$10,000.00.

(i) Transactions in currency involving cash in include, but are not limited to:

- (A) Purchase of chips and tokens,
- (B) Bets of currency,
- (C) Exchanges of currency for currency, including foreign currency,

(D) Currency received by a casino for wire transfer from a customer,

(E) Front money deposits,

(F) Safekeeping deposits,

(G) Payments on any form of credit, including markers and counter checks, and

(H) Purchases of a casino's check.

(ii) Transactions in currency involving cash out include, but are not limited to:

(A) Currency paid by a casino as a result of a wire transfer on behalf of a customer,

(B) Cash wins by a customer,

(C) Front money withdrawals,

(D) Safekeeping withdrawals,

(E) Redemptions of chips and tokens,

(F) Cashing of checks or other negotiable instruments,

(G) Reimbursements for customers' transportation expenses to the casino, and

(H) Exchanges of currency for currency, including foreign currency.

(iii) Multiple currency transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any gaming day. For purposes of this paragraph, a casino will be deemed to have the knowledge described in the preceding sentence, if:

(A) Any employee, officer, director, sole proprietor, or partner of the casino has knowledge,

(B) Or the books, records, logs, information retained on magnetic disk, tape, or other machine-readable media, or in any manual system, and similar documents and information, which the casino maintains pursuant to any law or regulation or within the normal course of its business, contain information that such multiple currency transactions have occurred.

4. It is proposed to amend § 103.27 by designating the present § 103.27 as § 103.27(a), and amending newly designated (a) by adding at the beginning the following:

§ 103.27 Identification required.

(a) Except as provided in paragraph (b) of this section, * * *

5. It is further proposed to amend § 103.27 by adding after the existing paragraph a new paragraph (b) to read as follows:

(b)(1) If a casino acquires knowledge, solely as described in

§ 103.22(a)(2)(iii)(B), that a cash buy in, purchase of chips or tokens, or cash bet has caused a customer's cash in transactions to be treated as a single

transaction in currency under § 103.22(a)(2)(iii), the casino shall obtain, verify and record, within a reasonable period of time after such knowledge is so acquired, the information described, in the manner prescribed, in § 103.27(a), which is then reasonably available. For purposes of the preceding sentence, information shall be deemed reasonably available if the customer is reasonably available.

(2) For special recordkeeping requirements regarding this rule, see § 103.36(b)(15).

6. It is proposed to amend § 103.36(a) by inserting in the first sentence of paragraph (a) the following after the words "record of the": "name, permanent address, and".

7. It is further proposed to amend § 103.36(a) by inserting the following in the second sentence after the words "shall secure the": "name, permanent address, and".

8. It is further proposed to amend § 103.36(a) by inserting the following between the second and third sentences: "The name and address of such person shall be verified by the casino. The verification shall be made by examination of a document of the type described in § 103.27(a), and the specific identifying information shall be recorded in the manner described in § 103.27(a)."

9. It is further proposed to amend § 103.36 by adding new paragraph (b)(9), to read as follows:

§ 103.36 Additional records to be made and retained by casinos.

(b) * * *

(9) A record of each person that the casino knows, or through reasonable diligence should know, has bought in at, bet, or purchased chips or tokens of, \$2,500 or more, through one or more transactions in currency, in a single gaming day. The record shall include the name, permanent address, casino account number (if any), and social security number or taxpayer identification number of such person; the date, time, and amount of currency involved in the transaction(s); and the name or casino license number of the casino employee preparing the record.

(i) The name and address of such person shall be verified by the casino. The verification shall be made by examination of a document of the type described in § 103.27(a), and the specific identifying information shall be recorded in the manner described in § 103.27(a).

(ii) If the person is a nonresident alien, the person's passport number or a

description of some other government document used to verify the person's identity shall be obtained and recorded.

(iii) In the event that a casino has been unable to secure the required social security number or taxpayer identification number, it shall not be deemed to be in violation of this section if it has made a reasonable effort to secure such number and it maintains a list containing the names and permanent addresses of those persons from whom it has been unable to obtain such number and makes the names and addresses of those persons available to the Secretary upon request.

(iv) If:

(A) A casino makes and retains the records described in § 103.36(b)(8) when a person buys in at, bets, or purchases chips of, at least \$2,500 in currency through one or more transactions in a gaming day;

(B) Such records contain all of the information required by this paragraph (b)(9) and

(C) The customer information for such records is verified as described in (b)(9)(i) and (ii) of this section, the casino shall not be required to make the records described in this paragraph (b)(9).

10. It is further proposed to amend § 103.36 by adding new paragraph (b)(10), to read as follows:

* * * * *

(b) * * *

(10) A record containing a list of each customer who is known by the casino by more than one name. The list shall include the name of the customer, his or her permanent address, casino account number (if any), and social security or taxpayer identification number (if known by the casino), and the aliases, nicknames, and other names by which the customer is identified. The list shall be reported to the Secretary or Commissioner of Internal Revenue, upon request.

11. It is further proposed to amend § 103.36 by adding new paragraph (b)(11), to read as follows:

* * * * *

(b) * * *

(11) A separate record containing a list of each transaction between the casino and its customers of \$2500 or more, involving the following types of instruments:

- (i) Personal checks,
- (ii) Business checks (including casino checks),
- (iii) Official bank checks,
- (iv) Cashier's checks,
- (v) Third-party checks,
- (vi) Promissory notes,
- (vii) Traveler's checks, and

(viii) Money orders.

The list will contain the time, date, and amount of the transaction; the name and permanent address of the customer; the type of instrument; the name of the drawee or issuer of the instrument; all reference numbers (e.g., casino account number, personal check number, etc.); and the name or casino license number of the casino employee who conducted the transaction. Applicable transactions will be placed on the list in the chronological order in which they occur.

12. It is further proposed to amend § 103.36 by adding new paragraph (b)(12), to read as follows:

* * * * *

(b) * * *

(12) A record containing a list of wire transfers of \$2,500 or more, into and out of a casino, on behalf of the customers of the casino. The record will list the time, date, and amount of the transaction; the outside place of origination or destination of the transfer; any advice, request, or instruction received or given regarding the transfer; the name, address, and casino account number (if any) of the customer; and the name of casino license number of the casino employee conducting the transaction.

13. It is further proposed to amend § 103.36 by adding new paragraph (b)(13), to read as follows:

* * * * *

(b) * * *

(13) A copy of the compliance program described in § 103.54(a).

(14) It is further proposed to amend § 103.36 by adding new paragraph (b)(14), to read as follows:

* * * * *

(b) * * *

(14) All documents and codes prepared in conjunction with the operation of the denominational imprest system, or the system to be used if the denominational imprest system is exempted by the Secretary, as described in § 103.54(b).

(15) It is further proposed to amend § 103.36 by adding new paragraph (b)(15), to read as follows:

* * * * *

(b) * * *

(15) A record that contains a list of each person on which the casino was required, solely by operation of § 103.27 (b)(1), to verify and record the information described in § 103.27(a), but the information was not reasonably available, within the meaning of § 103.27 (b)(1). The list shall contain any identifying information on the person which is available; a description of the specific information that was not obtained, verified, or recorded; and the

time, date, and amount of the transaction or transactions that caused the operation of § 103.27 (b)(1).

16. It is proposed to add new § 103.54 immediately after § 103.53, to read as follows:

§ 103.54 Special rules for casinos.

(a) *Compliance programs.* (1) On or before [60 days after publication of this rule in the *Federal Register*], each casino shall develop and implement a written program reasonably designed to assure and monitor compliance with the requirements set forth in subchapter II of chapter 53 of Title 31 of the United States Code and the regulations contained in this Part.

(2) At a minimum, each compliance program shall provide for:

- (i) A system of internal controls to assure ongoing compliance,
- (ii) Internal and/or external independent testing for compliance,
- (iii) Training of casino personnel,
- (iv) An individual or individuals to assure day-to-day compliance,
- (v) Using all available information to determine:

(A) When required by this part, the name, address, social security number, and other information, and verification of the same, of a person;

(B) The point in time at which multiple currency transactions will be treated as a single transaction for purposes of § 103.22(a)(2); and

(C) Whether any record as described in Subpart C of this part must be made and retained; and

(vi) For casinos that have automated data processing systems, the development and use of automated programs to aid in assuring compliance.

(3) Compliance with the requirements of this paragraph, in and of itself, shall not be considered a defense to any criminal or civil action involving a violation of subchapter II of chapter 53 of title 31 of the United States Code or the regulations contained in this part.

(b) *Denominational imprest system.*

(1) On or before [60 days after publication in the *Federal Register*], each casino shall develop and use a denominational imprest system to account for the following transactions:

(i) With its customers, all transactions involving chips, currency, or any combination of chips and currency other than those that occur at the gaming tables;

(ii) The segregation of currency for transfer to another financial institution;

(iii) The receipt of currency from another financial institution; and

(iv) The inventorying of currency that has been transferred from the games to the casino's central location for custody of the casino's currency.

(2)(i) For the transactions described in paragraph (b)(1)(i), each denominational imprest system shall:

(A) Provide individual imprest inventories of currency of chips and currency for each employee who is responsible for conducting such transactions;

(B) Assure the recording of the beginning and ending inventory of each individual imprest inventory by dollar value and denominational composition, and

(C) Provide for the chronological recording of (1) all such transactions and (2) all transactions involving the individual imprest inventories and any other place in the casino (e.g., a "chip bank"). The record shall contain the amount and a brief description of the transaction, including the denominational composition of all currency involved (e.g., "redemption of chips for one \$50 bill and two \$20 bills" or "payoff of credit with chips"). Paper tape containing the amount, denominational composition, and description meets this requirement. The description may be coded, so long as a single code is used uniformly in recording the transactions, and is made available to the Secretary upon request.

(ii) When a transaction described in paragraph (b)(1)(i) of this section involves cash in or cash out of \$2,500 or more in currency, the casino shall, in addition to all other requirements of this section, prepare a record containing the customer's name, permanent address, casino account number (if any), and social security number of taxpayer identification number; the date and time of the transaction; and the name or casino license number of the casino employee conducting the transaction. The customer's name and address shall be verified as described in § 103.27(a). If the customer is a nonresident alien, the casino shall also record the customer's passport number or a description of some other government document used to verify the person's identity. In the event that a casino is unable to secure the social security number or taxpayer identification number, it shall not be deemed to be in violation of this section if it has made a reasonable effort to secure such number and maintains a list containing the names and permanent addresses of those persons from whom it has been unable to obtain such numbers and makes the names and addresses of those persons available to the Secretary upon request.

(3) For the transactions described in paragraph (b)(1)(ii), (iii), and (iv) of this section the casino must prepare and keep a record containing the following information: the type of transaction involved (e.g., a "drop count"); the number of all denominations of currency involved (e.g., 10 \$100 bills, 50 \$50 bills, 25 \$20 bills, etc.); the specific place of origination or destination of the currency (e.g., the name of a commercial bank, the table number of currency transferred from a game to the cage, etc.); the time and date of the transaction; and the name of casino license number of the employee who prepares the record.

(4) The Secretary may exempt a casino from the requirements of this paragraph that relate to the transactions described in paragraph (b)(1)(i) of this section. The exemption may be granted, provided the casino certifies to the Secretary that:

(i) All of the transactions described in paragraph (b)(1)(i), of this section, which are in amounts in excess of \$10,000, occur only at one or more stations, and such stations handle no other transactions;

(ii) All of the transactions described in paragraph (b)(1)(i) of this section, which are in amounts of \$2,500 through and including \$10,000, occur only at one or more stations, and such stations handle no other transactions; and

(iii) For each transaction occurring at the station or stations described in paragraph (b)(4)(ii) of this section, a record is prepared, retained, and made available to the Secretary upon request, of the name, permanent address, casino account number (if any), and social security number or taxpayer identification number of the customer involved, the passport number or a description of some other government document if the customer is a nonresident alien, the date, time, and amount of the currency involved in the transaction; a brief description of the transaction; and the name of casino license number of the casino employee conducting the transaction. The name and address of the customer shall be verified as described in § 103.27(a). In the event that a casino is unable to secure the social security or taxpayer identification number, it shall not be deemed to be in violation of this section if it has made a reasonable effort to secure such number.

(c) *Special terms.* As used in this part, as applied to casinos:

(1) *Gaming day* means the normal business day of a casino. For a casino that offers 24 hour gaming, the term means that 24 hour period by which the casino keeps its books and records for

business, accounting, and tax purposes. For purposes of the regulations contained in this part, each casino may have only one gaming day, common to all of its divisions.

(2) *Customer* includes every person who is involved in a transaction to which this part applies, with a casino, whether or not that person participates, or intends to participate, in the gaming activities offered by that casino.

(3) *Business year* means the annual accounting period, such as a calendar or fiscal year, by which a casino maintains its books and records for purposes of subtitle A of title 26 of the United States Code.

(4) *Machine-readable* means capable of being read by an automated data processing system.

(5) *Casino account number* means any and all numbers by which a casino identifies a customer.

(d) *Ongoing identification requirements.* Casinos shall be under a continuous duty to obtain and record all missing information contained in the list required by paragraph (b)(15) of § 103.36, whenever the information becomes reasonably available.

Dated: July 26, 1988.

Gerald L. Hilsher,
Deputy Assistant Secretary (Law
Enforcement).

[FR Doc. 88-18630 Filed 8-17-88; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 94

[PR Docket 88-191]

Amendment of the Commission's Rules Concerning Point-to-Multipoint Use of Certain Bands and General Procedures for Filing an Application in the Microwave Service

AGENCY: Federal Communications Commission.

ACTION: Order granting extension of time.

SUMMARY: The Private Radio Bureau has adopted an Order granting the Motion for Extension of Time to file reply comments filed by Harris Corporation.

DATE: The reply comment period is extended to August 16, 1988.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

1. On April 21, 1988, the Commission adopted a *Notice of Proposed Rule Making (Notice)* in the above-captioned matter (53 FR 23132 (June 20, 1988)). Comments on the *Notice* were due July 18, 1988, and reply comments are due on or before August 2, 1988.

2. On July 22, 1988, The Community Telecommunications Network (CTN) filed a Motion to Accept Late-Filed Comments. In order to allow all interested parties to have the full fifteen days to respond to these comments, CTN requests a four day extension of the date for submitting reply comments. The Harris Corporation (Harris) also requested the Commission extend the time for filing reply comments. Harris contends that two weeks does not allow sufficient time for thoroughly analyzing the comments. It asks that the time for filing reply comments be extended to August 16, 1988.

3. It appears that the public interest would be served by granting an additional period in order to afford interested parties a full opportunity to respond to all the comments, including CTN's. Therefore, we will extend the reply comment deadline until August 16, 1988.

4. Accordingly, it is ordered, pursuant to the authority set forth in § 0.331 of the Commission's Rules and Regulations, that interested parties have until August 16, 1988, to file reply comments in this proceeding.

Federal Communications Commission.
Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 88-18762 Filed 8-17-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****National Highway Traffic Safety Administration****49 CFR Parts 393 and 571**

[NHTSA Docket No. 88-14, Notice 1]

Federal Motor Vehicle Safety Standards; Parts and Accessories Necessary for Safe Operation

AGENCY: Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments; Grant of petition for rulemaking.

SUMMARY: Mr. W. A. Barr submitted a petition to NHTSA concerning the devices which connect heavy truck

tractors and trailers. According to the petitioner, present designs of the lock of the fifth wheel of tractors and the kingpin on trailers make it possible for the driver to obtain what is called a "high hitch," or false latch, when a trailer is connected to a tractor. Mr. Barr stated that if a high hitch occurs, the trailer may separate from the tractor during highway driving. After evaluating the petition, NHTSA has concluded that the issues raised by the petitioner should be addressed in rulemaking. This notice grants Mr. Barr's petition and requests comments on a number of issues concerning high hitches. This notice is being issued jointly with FHWA, since some of the issues relate to the possible regulation of vehicles currently in use as well as newly manufactured vehicles.

DATES: Comments must be received on or before October 17, 1988.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.

NHTSA is responsible for compiling the information received in response to this notice. Written comments should be submitted only to NHTSA.

FOR FURTHER INFORMATION CONTACT:

NHTSA: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5274. FHWA: Mr. Thomas Kozlowski, Office of Motor Carrier Standards, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2981.

SUPPLEMENTARY INFORMATION: Mr. W. A. Barr submitted a petition to NHTSA concerning the devices which connect tractors and trailers. According to the petitioner, present designs of the kingpin on trailers and the lock of the fifth wheel of tractors make it possible for the driver to obtain what is called a "high hitch," or false latch, when the tractor is connected to a trailer. Mr. Barr stated that if a high hitch occurs, the trailer may separate from the tractor during highway driving. According to the petitioner, the accidents which have occurred from high hitches are not frequent, but usually are very serious when an automobile strikes an uncontrolled trailer which has separated from a tractor.

Mr. Barr characterized his petition as one requesting the agency to commence

a proceeding to determine whether to issue an order concerning notification and remedy of a defect in equipment that relates to motor vehicle safety. The petitioner requested that NHTSA "require an SAE standard for the kingpin which will not permit a high hitch." The petitioner stated that this may also mean changes to the fifth wheel locks. Mr. Barr stated that one possible approach would be to make the bottom diameter of the kingpin larger than the diameter of the recess in the lock so that the hinge lock cannot be closed if the bottom of the kingpin is placed in the recess during the hitching process.

Since Mr. Barr requested a "standard" to prevent high hitches, NHTSA is treating the petition as one for rulemaking. The agency notes that it does not issue "SAE standards," but instead issues Federal motor vehicle safety standards, pursuant to the National Traffic and Motor Vehicle Safety Act. SAE standards are voluntary standards, published by the Society of Automotive Engineers (SAE).

As part of its efforts to evaluate Mr. Barr's petition, NHTSA contacted several manufacturers of fifth wheels about high hitches. The agency was advised by some manufacturer representatives that it is possible to false latch most of the designs on the market. It was generally contended, however, that it is the responsibility of the truck driver to conduct an inspection to ensure a proper connection. NHTSA believes, based on discussions with heavy truck fleet managers, that a typical estimate for high hitches is about two or three per year for a fleet of one thousand trucks, and that most separations occur before the truck reaches the public highway.

NHTSA understands that at least one fifth wheel design, produced by Fontaine Truck Equipment Company, was designed to prevent high hitches. The agency believes that the design does not cost more than other fifth wheel designs.

NHTSA also analyzed available accident data. The agency recently completed a study in which six years of accident data collected by the Office of Motor Carriers (OMC, formerly the Bureau of Motor Carrier Safety or BMCS) were screened for accidents related to coupling defects. The data showed coupling defects involved in 353 out of 188,836 accidents. Forty-three of the 353 fell in the categories of accidents which were preceded by semi-trailer separation or of accidents which may have been preceded by semi-trailer separation.

Two studies published in 1985 and 1986 by the University of Michigan Transportation Research Institute, based upon a combination of FARS and OMC data, showed tractor-trailer separation as a primary cause of the accident in 0.24 percent of the accidents studied. However, some of the accidents were not related to fifth wheels.

After evaluating Mr. Barr's petition, NHTSA has concluded that there is a reasonable possibility that the order requested in the petition will be issued at the conclusion of a rulemaking proceeding. The agency therefore grants the petition. The accident data cited above indicate that high hitches do not result in a large number of accidents. However, the separation of a trailer from a tractor during highway driving could result in serious consequences. NHTSA believes that this may be an area where safety benefits could be obtained by low cost design changes.

In order to obtain assistance in conducting further analysis of the safety issues related to high hitches, this notice requests public comments. The notice is being issued jointly with FHWA, since some of the issues relate to the possible regulation of vehicles currently in use as well as newly manufactured vehicles. (NHTSA's standards apply only to new vehicles, while FHWA's standards apply to vehicles in use.) NHTSA and FHWA are particularly interested in comments on the following questions:

1. What information is available about separation of tractors and trailers during driving, both on-the-highway and before the combination reaches the highway? What are the causes of such separations? What is the frequency of high hitches?

2. What information, including data and accident analyses, is available concerning accidents caused by separation of tractors and trailers during driving? How many of these separations are attributable to high hitches?

3. How can kingpins and fifth wheels be designed to prevent high hitches? What current designs of kingpins and fifth wheels prevent high hitches? What changes would be needed to other designs to prevent high hitches? Do current patents present any limitations in making such changes? What would be the costs of redesigns needed to prevent high hitches?

4. Should NHTSA develop requirements to prevent high hitches? What types of tests and performance requirements should be considered by the agency if it develops such requirements? Should such requirements address both kingpins and fifth wheels?

5. Should a possible requirement for preventing high hitches be applicable to

vehicles currently in use as well as to newly manufactured vehicles? How could current vehicles be retrofitted to prevent high hitches? What would be the cost of retrofitting current vehicles to prevent high hitches?

The granting of this petition does not mean that a rule will necessarily be issued. The determination of whether to issue a rule is made in the course of the rulemaking proceeding, in accordance with statutory criteria.

Interested persons are invited to submit comments. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 393 and 571

Highways and roads, Highway safety, Imports, Motor carriers, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Issued on August 12, 1988.

Robert E. Farris,
Federal Highway Administrator.

Barry Felrice,
Associate Administrator for Rulemaking,
NHTSA.

[FR Doc. 88-18723 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 88-12; Notice 1]

RIN: 2127-AC50

Federal Motor Vehicle Safety Standards Hydraulic Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Standard No. 105, *Hydraulic Brake Systems*, requires vehicles to have one or more brake system indicator lamps, to warn the driver about certain types of brake failure and to indicate application of the parking brake. Section S5.3.2 of the standard requires that the brake system indicator lamps be activated automatically when the vehicle is started, to check whether the lamp bulbs are burned out. That section also provides that in vehicles equipped with an automatic transmission, the activation as a check of lamp function is not required when the transmission shift lever is in a forward or reverse drive position, since the vehicle cannot be started when the transmission shift lever is in those positions. This notice proposes to amend the standard to provide that the activation as a check of lamp function is not required under any condition in which a vehicle cannot be started due to operation of an interlock switch. This rulemaking results from a petition for rulemaking submitted by Mazda.

DATES: Comments must be received on or before October 17, 1988. The proposed requirements would be effective 30 days after publication of a final rule in the *Federal Register*.

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Bloom, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-5277).

SUPPLEMENTARY INFORMATION: Standard No. 105, *Hydraulic Brake Systems*, requires vehicles to have one or more brake system indicator lamps, to provide a warning about certain types of brake failure and to indicate application of the parking brake. Section S5.3.2 of the standard requires that the brake system indicator lamps be activated automatically when the vehicle is

started, to provide a check of lamp function. That section reads as follows:

All indicator lamps shall be activated as a check of lamp function either when the ignition (start) switch is turned to the "on" (run) position when the engine is not running, or when the ignition (start) switch is in a position between "on" (run) and "start" that is designated by the manufacturer as a check position. However, in vehicles equipped with an automatic transmission, the activation as a check of lamp function is not required when the transmission shift lever is in a forward or reverse drive position.

The second sentence of section S5.3.2 was not originally included in Standard No. 105. In adding the sentence, NHTSA stated the following:

* * * Toyota Motor Sales, Inc., has requested confirmation that S5.3.2 of the standard requires a check of the brake system indicator lamp function only when the transmission shift lever is in the "P" (park) or "N" (neutral) position (in the case of vehicles with automatic transmission). The literal wording of S5.3.2 requires a check of lamp function without regard to the position of the transmission shift lever, whenever the ignition switch is turned to the "on" position when the engine is not running, or when the ignition switch is in a position between "on" and "start" that is designated by the manufacturer as a check position. In the case of vehicles with an automatic transmission, however, this wording does not reflect the NHTSA's intent with respect to check function. To properly reflect this intent, the language of S5.3.2 is hereby modified in accordance with Toyota's request * * *. 40 FR 42872, September 27, 1975.

NHTSA notes that since the purpose of section S5.3.2 of Standard No. 105 was to provide an automatic check of lamp function each time the vehicle was started, it was unnecessary to require the check function in situations where the vehicle could not be started. Standard No. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, requires for vehicles equipped with automatic transmission that the engine starter be inoperative when the transmission shift lever is in a forward or reverse drive position. Since vehicle equipped with automatic transmission could not be started when the transmission shift lever is in a forward or reverse drive position, it was unnecessary to require the check function when the transmission shift lever is in either of those positions.

Mazda submitted a petition for rulemaking requesting an amendment of section S5.3.2's provision limiting the conditions under which the lamp check function must be provided. That company stated that the provision, which now applies only to vehicles equipped with automatic transmissions,

should also apply to manual transmission vehicles which are equipped with a clutch pedal interlock switch. Mazda stated that this type of interlock switch prevents the engine from starting unless the clutch pedal is fully depressed, and is analogous to the starter interlock required by Standard No. 102 for vehicles equipped with automatic transmissions.

Mazda also asserted that overall cost effectiveness, and to a lesser degree, safety, would be enhanced by its requested amendment. According to the petitioner, the amendment would enable manufacturers to employ a single wiring harness for the brake system indicator lamp circuit for vehicles equipped with both manual and automatic transmissions. That company stated that it currently designs, produces and installs two separate brake system indicator lamp harnesses, one for manual transmission vehicles and the other for automatic transmission vehicles, which results in unnecessary additional costs. Mazda also stated that its requested amendment would provide an incentive for manufacturers to provide clutch pedal starter interlock switches for vehicles not so currently equipped. That company stated that unexpected motion of the vehicle during engine activation would be reduced as the clutch pedal would be depressed more often in a wider variety of vehicles prior to engine activation.

NHTSA agrees with the petitioner that, for purposes of section S5.3.2's provision limiting the conditions under which the lamp check function must be provided, a clutch pedal interlock switch for manual transmission vehicles is analogous to the starter interlock required by Standard No. 102 for vehicles equipped with automatic transmissions. Since the purpose of section S5.3.2 of Standard No. 105 is to provide an automatic check of lamp functions each time the vehicle is started, the agency tentatively concludes that it is unnecessary to require the check function under any condition where a vehicle cannot be started due to operation of an interlock switch. The agency therefore grants Mazda's petition and is proposing to amend Standard No. 105 accordingly. NHTSA believes that the proposed amendment would increase manufacturer flexibility without any adverse impact on safety.

Since the proposed amendment would impose no new requirements but would instead increase manufacturer flexibility by relieving a restriction, the agency is proposing that the amendment become effective 30 days after publication of a final rule.

The agency has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the proposed amendment would be so minimal that a full regulatory evaluation is not required. Since the proposed amendment would impose no new requirements but simply permit additional flexibility in the design of the wiring harnesses for brake system indicator lamps, any cost impacts would be in the nature of small, nonquantifiable cost savings.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this section on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Small businesses, small organizations, and small governmental units would be affected by the proposed amendment only to the extent that they purchase motor vehicles. For the reasons discussed above, the amendments would not significantly affect vehicle price. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this proposed rule for the purposes of the National Environmental Policy Act, and determined that the proposed rule would not have any significant impact on the quality of the human environment.

Finally, this proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 533.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street

address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.105 [Amended]

2. S5.3.2 of § 571.105 would be revised to read as follows:

S5.3.2 (a) Except as provided in paragraph (b) of this section, all indicator lamps shall be activated as a

check of lamp function either when the ignition (start) switch is turned to the "on" (run) position when the engine is not running, or when the ignition (start) switch is in a position between "on" and "start" that is designated by the manufacturer as a check position.

(b) In the case of a vehicle when has an interlock device that prevents the engine from being started under one or more conditions, the indicator lamps need not be activated under any condition in which the engine cannot be started.

Issued on August 12, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-18724 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

[Docket No. 80476-8076]

Western Pacific Crustacean Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to revise the regulations implementing the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). This proposed rule would amend the regulations to better reflect the intent of Amendment 5 to the FMP with respect to escape vent panels and reporting requirements.

DATE: Written comments must be submitted on or before September 16, 1988.

ADDRESS: Send comments to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. A copy of Amendment 5 may be obtained from the Regional Director.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Pacific Islands Coordinator, Pacific Area, 2570 Dole St., Room 106, Honolulu, HI, 96822-2396, 808-955-8831.

SUPPLEMENTARY INFORMATION:

Background

Amendment 5 to the FMP was submitted by the Western Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce. The final rule implementing Amendment 5 went into effect on January 14, 1988 (52 FR 47572, December

15, 1987). Several provisions contained in Amendment 5 relating to escape vent panels and reporting requirements were omitted from the proposed (52 FR 28028, July 27, 1987) and final rule. This proposed rule was developed to implement these omitted provisions.

The regulations implementing Amendment 5 require that all lobster traps used in the Northwestern Hawaiian Islands (NWHI) have a minimum of two escape vent panels that meet certain specifications. The amendment also specified that the two panels should be placed opposite each other in the trap. This latter provision was omitted from the proposed and final rules. Based on at-sea trials conducted by NMFS, escape panels of the size and configuration described in the FMP were judged by the Council to be the most compatible with the management goals and needs of the fishery. To comply fully with the intent of the FMP regarding the configuration of escape vent panels, this proposed rule would amend the regulations to require that the panels in each trap be placed opposite each other. All permit holders in the NWHI lobster fishery have been advised of the escape vent configuration recommended in the FMP and of NMFS' intent to amend the regulation accordingly.

Amendment 5 also provided for a number of changes in FMP reporting requirements. The permit application form and daily catch log report were amended to add information requests needed for management of the lobster fishery. The requirement for an annual processor's report was eliminated and the Trip Processing and Sales Report was replaced by the Lobster Report for Transshipment and Sales. All of the proposed changes in reporting requirements, as approved by the Office of Management and Budget under the Paperwork Reduction Act, were incorporated in the final rule except for the proposed Lobster Report for Transshipment and Sales. The final rule provided for collection of transshipment and sales data on the daily catch report, but did not provide for replacement of the Trip Processing and Sales Report with the Lobster Report for Transshipment and Sales as provided in Amendment 5.

The new report is structured to provide information on the amount of lobsters and their incidental catch sold or transshipped to points within or outside of the State of landing. The revenue information generated by this report is needed to define the economic profile of the fishery for future management decisions.

The proposed new reporting form is less confusing than the original form and better reflects the current structure of the fishery. Accordingly, the proposed rule would amend the regulatory text to require use of the new Lobster Report for Transshipment and Sales, in place of the former Trip Processing and Sales Report.

An additional technical change is proposed to replace the words "Center Director" with the words "Regional Director" in §§ 681.4(b)(2)(xxi) and 681.5(b)(2)(x) to accurately reflect management responsibility.

The word "unobstructed" is proposed to be added to the description of circular holes in escape vent panels in § 681.24(c)(1) to clarify the Council's original intent in Amendment 5 to the FMP.

The measures proposed in Amendment 5 were presented at a public information meeting in Honolulu, Hawaii, on April 29, 1986 and at a public hearing in Honolulu on May 18, 1987. All lobster fishery permit holders have been kept apprised of the issues contained in Amendment 5 and have been requested to offer comments.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this measure is necessary for the conservation and management of the crustacean fishery of the western Pacific region and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental impact statement (EIS) for the original FMP. An environmental assessment (EA) was also incorporated into Amendment 5. The measures proposed to be implemented by this rule were included in Amendment 5, so the Assistant Administrator has concluded that this action falls within the categorical exclusion identified in the environmental review procedures in NOAA Directives Manual 02-10 at 5(b)(3)(a). Consequently, no additional environmental document has been prepared. A copy of the amendment, incorporating the EA, and the FMP's EIS can be obtained from the Regional Director at the above address.

The Under Secretary of Oceans and Atmosphere, NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The present action will not have a cumulative effect on the economy of \$100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment,

investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. This is because the industry has already anticipated the proposed action to incorporate in the regulations requirements for escape vents and reporting which were approved under Amendment 5 but inadvertently omitted from the proposed and final rules for the amendment. There are approximately 40 permit holders in the fishery, although only a small percentage of them actually fish. All permittees were advised and were fully aware of the requirements for escape vents to be placed opposite each other during the rulemaking procedures in 1987. In addition, the sole manufacturer of traps began producing traps with vents placed opposite each other in November, 1987. As a result, a majority of the industry has already complied with the vent requirements, and most, if not all, traps now have escape vents. Conversion of those few traps which have not yet been converted would not impose a significant cost on the industry.

The burden associated with the revised reporting requirement will be the same as that reported in the final rule implementing Amendment 5 to the FMP. The replacement of the Trip Processing and Sales Report with the new Lobster Report for Transshipment and Sales will not significantly change the burden hours, while providing data essential for the management of the fishery. The annual reporting burden for all fishermen was erroneously reported as 54 hours in the classification section of the final rule to Amendment 5 but actually had been calculated and approved by OMB as 48 hours, or 4 hours per fisherman (each of the 12 vessels fishing will incur a burden of 10 minutes per report for each of their 24 trips per year).

This rule contains a collection-of-information requirement at § 681.5 subject to the Paperwork Reduction Act. This requirement has been previously approved by the Office of Management and Budget (OMB) under Control Number 0648-0193.

The Council has determined, and the appropriate State and territorial government offices have found that the measures established in Amendment 5, including the measures implemented by this proposed rule, are consistent to the maximum extent practicable with the approved coastal zone management

programs of Hawaii and the territories of American Samoa and Guam.

The proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

Dated: August 15, 1988.

James E. Douglas, Jr.,
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Part 681 is proposed to be amended as follows:

PART 681—[AMENDED]

1. The authority citation for 50 CFR Part 681 continues to read as follows:

Authority: 16 USC 1801 *et seq.*

2. In § 681.4 paragraph (b)(2)(xxi) is revised to read as follows:

§ 681.4 Permits.

(b) * * *

(2) * * *

(xxi) Any other fishery management data requested by the Regional Director.

3. In § 681.5, in paragraphs (a)(3), (4), and (5), the words "Trip Processing and Sales Report" are amended to read "Lobster Report for Transshipment and Sales"; paragraphs (b)(2)(x), (b)(4), (b)(5), (c)(4)(iii) and (iv) are removed; and paragraphs (b)(2)(viii) and (ix), (c) introductory text, (c)(3), (c)(4) introductory text, (c)(4)(i) and (ii) are revised to read as follows:

§ 681.5 Recordkeeping and reporting.

(b) * * *

(2) * * *

(viii) Number of octopus and other species per trap deployment;

(ix) Any other fishery management data requested by the Regional Director.

(c) *Lobster Report for Transshipment and Sales.* The Lobster Report for Transshipment and Sales must contain the following information for all lobsters taken under this part:

(1) * * *

(2) * * *

(3) Sales Information—

(i) Weight and revenue from sale of spiny lobsters by product type;

(ii) Weight and revenue from sale of slipper lobster by product type;

(iii) Weight and revenue from sale of octopus by product type; and

(iv) Weight and revenue from sale of other fishery products by product type.

(4) Transshipment Information (for lobster products that have not been sold but have been placed in storage or transshipped elsewhere for future sale)—

(i) Weight of spiny lobsters by product type; and

(ii) Weight of slipper lobster by product type.

* * *

4. In § 681.24, paragraph (c) introductory text and (c)(1) are revised and a new paragraph (c)(3) is added to read as follows:

§ 681.24 Gear restrictions.

* * *

(c) Each lobster trap must have a minimum of two escape vent panels that meet the following requirements:

(1) Panels must have at least four unobstructed circular holes no smaller than 67 millimeters (mm) in diameter with centers at least 82 mm apart.

* * *

(3) Panels must be placed opposite one another in each trap.

* * *

[FR Doc. 88-18767 Filed 8-17-88; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 53, No. 160

Thursday, August 18, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

White Pass Ski Area Expansion; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for a proposal to expand the White Pass Ski Area Special Land Use Permit boundary to allow for downhill and cross country skiing in the 800-acre area that was withdrawn from the Goat Rocks Wilderness by the Washington State Wilderness Act of 1984 and an additional 500 acres of National Forest administered land. This proposal is located on the Packwood Ranger District of the Gifford Pinchot National Forest in Lewis County and the area of land is administered by the Naches Ranger District of the Wenatchee National Forest through a Memorandum of Understanding. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by October 1, 1988.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Sonny J. O'Neal, Forest Supervisor, Wenatchee National Forest, 301 Yakima St., P.O. Box 811, Wenatchee, Washington 98807-0811.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Phillip D. Glass,

Recreation Staff Officer, Wenatchee National Forest at the above address, telephone (509) 662-4332, or Donald Rotell, District Ranger, Naches Ranger District, Wenatchee National Forest, 10061 Highway 12, Naches, Washington 98937, telephone (509) 653-2205.

SUPPLEMENTARY INFORMATION: The EIS will be prepared in accordance with existing approved land and resource management plans. The document will discuss whether to allow expansion of the existing ski area to the area in question and what restrictions may apply to the expansion area. The proposal encompasses about 1300 acres.

In preparing the EIS, the Forest Service will identify and consider a range of alternatives for this site. A range of alternatives will be developed and examined to deal with the significant issues developed during the scoping process. One alternative will include the no action alternative. Other alternatives will consider different intensities of development with or without special management requirements.

Sonny O'Neal, Forest Supervisor, Wenatchee National Forest, Wenatchee, Washington, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, state and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Public meetings will be held in eastern and western Washington. Notice of meeting dates and locations will be

published in local newspapers and posted in public buildings.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March 1989. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the proposed White Pass Ski Area expansion participate at that time.

To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by November 1989. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the draft EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of

Decision. That decision will be subject to appeal under 36 CFR 211.18.

Sonny J. O'Neal,
Forest Supervisor.

[FR Doc. 88-18669 Filed 8-17-88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Finding of No Significant Impact; Pates Creek Watershed, AL

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pates Creek Watershed, Houston and Geneva Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama 36830, telephone (205) 821-8070.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Pates Creek Watershed, Alabama

Notice of a Finding of No Significant Impact

The project concerns a plan for reducing serious deterioration of the resource base caused by excessive sheet, rill, and ephemeral gully erosion on sloping cropland, reducing land erosion due to concentrated overland flow and reducing cost of road and bridge maintenance due to sediment deposition. The planned works of improvement include land use conversion on 40 acres of marginal cropland, accelerated conservation land treatment on 3640 acres of cropland, and installation of 9 grade stabilization structures.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental

Protection Agency, and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ernest V. Todd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Date: August 11, 1988.

Ernest V. Todd,

State Conservationist.

[FR Doc. 88-18670 Filed 8-17-88; 8:45 am]

BILLING CODE 3410-16-M

Finding of No Significant Impact; Moores Creek Watershed, AL

AGENCY: Soil Conservation Service; USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Moores Creek Watershed Project, Chambers County, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 655 Opelika Road, Auburn, Alabama 36830, telephone 205-821-8070.

SUPPLEMENTARY INFORMATION: A determination has been made by Ernest V. Todd that the proposed works of improvement for the Moores Creek Watershed Project will not be installed. The sponsoring local organizations have concurred in this determination and agreed that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Ernest V. Todd, State Conservationist at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the Federal Register.

(This activity is listed in the catalog of Federal Domestic Assistance under No.

10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of the Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Date: August 2, 1988.

Ernest V. Todd,

State Conservationist.

[FR Doc. 88-18716 Filed 8-17-88; 8:45 am]

BILLING CODE 3410-16-M

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

Meeting

AGENCY: Christopher Columbus Quincentenary Jubilee Commission.

ACTION: Notice of meeting.

SUMMARY: This notice announces a forthcoming meeting of the Christopher Columbus Quincentenary Jubilee Commission, a presidential commission established in 1984 (Pub. L. 98-375). The meeting will be held in Baltimore, Maryland and will be chaired by Commission Chairman John N. Goudie. **DATES:** Thursday, September 15, 1988 at 9:30 a.m. (Closed). Friday, September 16, 1988 at 9:30 a.m. (Open).

ADDRESSES: On September 15, 1988 from 9:30 a.m. to 12:00 p.m. at the Omni International Hotel, International Ballroom A, Baltimore, Maryland. September 16, 1988 from 9:30 a.m. to 1:00 p.m. at the Omni International Hotel, International Ballroom A, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Jennifer Pease, (202) 632-1992.

SUPPLEMENTARY INFORMATION: On September 15 and 16, the Commission will meet to discuss proposals for endorsement of Quincentenary projects. The Commission will also review committee recommendations along with a financial review of the Commission, and fundraising strategies for corporate participation in the Quincentenary.

John Alexander Williams,

Director.

[FR Doc. 88-18671 Filed 8-17-88; 8:45 am]

BILLING CODE 6820-RB-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Performance Review Board; Eligibility

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the

**Economic Development Administration
Senior Executive Service (SES)
Performance Appraisal System:**

Steven R. Brennen
John E. Corrigan
David Farber
Edward G. Jeep
George Muller
Charles E. Oxley
Craig M. Smith
Edward A. McCaw,

*Executive Secretary, Economic Development
Administration, Performance Review Board.*
[FR Doc. 88-18713 Filed 8-17-88; 8:45 am]

BILLING CODE 3510-B5-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade
Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading
Company Affairs, International Trade
Administration, Department of
Commerce, has received an application
for an Export Trade Certificate of
Review. This notice summarizes the
conduct for which certificate is sought
and requests comments relevant to
whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT:

John E. Stiner, Director, Office of Export
Trading Company Affairs, International
Trade Administration, 202/377-5131.
This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III
of the Export Trading Company Act of
1982 (Pub. L. 97-290) authorizes the
Secretary of Commerce to issue Export
Trade Certificates of Review. A
certificate of review protects its holder
and the members identified in it from
private treble damage actions and from
civil and criminal liability under federal
and state antitrust laws for the export
conduct specified in the certificate and
carried out during its effective period in
compliance with its terms and
conditions. Section 302(b)(1) of the Act
and 15 CFR 325.6(a) require the
Secretary to publish a notice in the
Federal Register identifying the
applicant and summarizing its proposed
export conduct.

Request for Public Comments

Interested parties may submit written
comments relevant to the determination
whether a certificate should be issued.
An original and five (5) copies should be
submitted no later than 20 days after the
date of this notice to: Office of Export
Trading Company Affairs, International
Trade Administration, Department of
Commerce, Room 5618, Washington, DC

20230. Information submitted by any
person is exempt from disclosure under
the Freedom of Information Act (5 U.S.C.
552). Comments should refer to this
application as "Export Trade Certificate
of Review, application number 88-
00014." A summary of the application
follows.

Applicant: American Cast Metals
Association (ACMA), 455 State Street,
Des Plaines, Illinois 60016, Contact:
Daniel Marcus, Director of Marketing,
Telephone: (312) 299-9180.

Application #: 88-00014.

Date Deemed Submitted: August 5,
1988.

Members (in addition to applicant):

AACCO Foundry; Abex. Corp.; Ace
Foundry Co.; Advance Foundry Co.;
Akron Foundry Co.; Allegheny Foundry
Co.; Alloy Engineering and Castings;
Alloys Non Ferrous Foundry; Aluminum
Castings Corp.; Amcast Industrial Corp.;
The American Brass and Iron Foundry;
American Cast Iron Pipe; American
Steel Foundries; American Valve and
Hydrant Manufacturing Co.; Anstey
Foundry; Appleton Electric Co.; Arneson
Foundry, Inc.; Arrow Aluminum
Castings; Arth Brass & Aluminum
Castings; Arzt Foundry Co.; Atherton
Foundry Products; Atlantic States Cast
Iron Pipe; Atlas Foundry Co.; Gartland-
Haswell Foundry Co., Inc.; Atlas
Foundry and Machine Co.; Auburn
Foundry Co.; Aurora Industries Inc.;
Badger Foundry Co.; Bahr Brothers
Manufacturing Co.; Barry Foundry;
Batavia Foundry and Machine Co.;
Belgium Foundry Corp.; Bell Foundry
Co.; Beloit Corp.; Benton Foundry; Berlin
Foundry Corp.; Bierman-Everett
Foundry; Blackhawk Foundry and
Machine; Bloomfield Foundry; Bodine
Aluminum Inc.; Brass and Bronze
Casting Co.; Briggs & Stratton Corp.;
Brillion Iron Works; Bronze Co. Ltd.,
K.P.; Bronze Craft Corp.; Brookman Cast
Industries; Brooks Foundry; Brumund
Foundry, Inc.; Buck Co., Inc.; Burnham
Corp.; Calhoun Foundry Co.; California
Electric Steel; Calumet Brass Foundry;
Campbell Foundry Co.; Canton Castings;
Cast Metals Corp. of Florida; Cedar
Springs Castings, Inc.; Centre Foundry
and Machine Co.; Chicago Aluminum
Castings Co., Inc.; Chicago-Dubuque
Foundry; Christensen and Olsen
Foundry Co.; Citation Carolina Corp.;
Southern Ductile Casting Co.; Clark
Metal; Clay & Bailey Manufacturing Co.;
Clearfield Machine; Clow Corp.; Clow
Water System Corp.; CMI International;
Cochrane Foundry; Colonial Brass Co.;
Columbian Bronze Corp.; Columbiana
Foundry Co.; Consolidated Metco;
Covert Iron Works; Crowe Foundry Ltd.;
Curto-Ligonier Foundry Co.; Dalton
Foundries; Dameron Alloy Foundries;

Dayton Foundry; De Zurik Corp.;
Decatur Foundry; Deere & Company;
Delray Steel Castings; Dempsey Inc.;
Dent Manufacturing; Detroit Non
Ferrous Foundry; Dexter Co.; Didion &
Sons Foundry Co.; Dix-Superior
Aluminum Foundry, Inc.; Dock Foundry
Co.; Dofasco Inc.; Donsco Inc.; Down
River Casting Co.; Draper Corp.; Duriron
Co., Inc.; East Jordan Iron Works; The
Eastern Company; Eastern Foundry Co.;
ECK Foundries; Electric Steel Castings
Co.; Electron Corp.; Elizabeth Street
Foundry Co.; Elkhart Foundry &
Machine; Ellis & Vans Foundry; EMI
Company; Enderlein Co., H.G.;
Enterprise Brass Works; Ephrata
Manufacturing Company, Inc.; Erie
Bronze & Aluminum; Essex Castings;
Ewing Light Metals Inc.; Excelsior
Foundry Co.; Fairfield Aluminum
Castings; Falcon Foundry Co.; Falk
Corp.; Faunt Foundry Co.; Felton
Aluminum Co.; Ferrous Technology;
Kline Foundries; Fisher Cast Steel
Products; Flanagan Iron Works;
Flomatic Corp.; Fonderie Grand'Mere
Ltee; Ford Motor Co.; Foundry Inc., The;
Foundry of the Shoals; Francis and
Nygren Foundry Co.; Frank Foundries
Corp.; Frazer and Jones Co.; Frog,
Switch & Manufacturing Co.; Frontier
Foundries; G & C Foundry Co.;
Gainesville Foundry; Galva Foundry
Co.; Gartland Foundries, Inc.; Gartland
Foundry Co.; General Casting Co.;
General Foundry Co.; General
Housewares Corp.; General Signal; GIW
Industries, Inc.; Globe Iron Foundry;
Goetz Corp. of America; Golden's
Foundry & Machine Co.; Great Lakes
Castings Corp.; Grede Foundries; Gregg
Industries; Halpen & Co.; Harmony
Castings; Harrison Steel Castings Co.;
Heatwole Foundry Company, Inc.;
Hendrix Mfg. Co.; Charles O. Hiler and
Son, Inc.; Hiler Industries; Accurate
Castings, Inc.; Hitchcock Industries;
HNF Inc.; Hodge Foundry; Hunstad
Foundry; Hyde Park Foundry &
Machine; Intermet Corp.; Interstate
Castings; Iowa Iron Works; Iowa
Malleable Iron Co.; Iroquois Foundry
Co.; James Jones Co.; Johnstown Corp.;
Joy Tech., Inc.; Kelly Foundry &
Machine; Kelsey-Hayes, Inc.; Keystone
Grey Iron Foundry Co.; Kirsh Foundry
Inc.; Kurdziel Iron Industries; Lacy
Foundries; Lancaster Malleable Castings
Co.; Larson Foundries; Lattimer-Stevens;
Lawran Foundry; Le Baron Foundry;
Leitelt Brothers; LEMFCO Inc.; Liberty
Foundry Co.; Lincoln Brass Works;
Littler Diecast Corp.; Lodi Iron Works,
Inc.; M & H Valve Co.; M.P. Industries,
Inc.; Mackenzie Specialty Castings;
Mansfield Brass & Aluminum; Martin
Foundries Co.; Maynard Steel Casting

Co.; Mc Conway & Torley Corp.; Mc Donald Manufacturing Co., A.Y.; Mc Wane Cast Iron Pipe; Meehan Johnson Machine Co.; Merit Metal Products Corp.; Metal Dynamics Corp.; Mid City Foundry Co.; Midwest Foundry Co.; Midwest Metallurgical Laboratory, Inc.; Milwaukee Malleable & Gray Iron Works; Mobil Pulley & Machine Works; Modern Foundry & Manufacturing; Morrow Foundry Inc.; Motor Castings Co.; Multi-Cast Corp.; Myers Co., F.E.; National Castings Inc.; Navistar International; Neelon Castings; Neenah Brass & Aluminum; Neenah Foundry Co.; Neptune Water Meter Co.; NO AM Corp.; North American Royalties; Noblesville Casting; North Star Casteel Products; Nutmeg Steel Castings; O & H Foundry; Oil City Iron Works; Omaha Steel Castings; Opelika Foundry Co.; Orrville Bronze & Aluminum; Osco Industries; Overmyer Corp.; P.C.M. Company; Pacific States Cast Iron Pipe; Pelton Casteel; Pennacast Corp.; Pennsylvania Steel Foundry & Machine; Perkins, Henry Co.; Philbrick-Booth & Spencer; Piad Precision Casting; Plymouth Foundry Inc.; Pohlman Consolidated; Pomona Die Casting Corp.; Pontiac Foundry; Process Prototype; Progressive Foundry; Prospect Foundry; Quaker Alloy Inc.; Quali-Cast Foundry, Inc.; Quality Castings Co.; R & D Pattern & Foundry; Racine Steel Castings; Reliable Castings Corp.; Reliance Electric Corp.; Richmond Casting Company; Robinson Foundry; Rochester Metal Products Corp.; Rockwell International; Rodney Hunt Co.; Roloff Manufacturing Corp.; Ross Aluminum Foundries; Sawbrook Steel Casting Co.; Cushman Foundry Inc. Div.; Schneider Corp.; Scott Casting Corp.; Scott-Atwater Foundry; Seneca Foundry, Inc.; Sharon Foundry; Shumway and Sons, C.W.; Sibley Machine & Foundry; Slinger Manufacturing Co.; Sloan Valve Co.; Smith Co., H.B.; Smith Foundry Co.; Smith Steel Casting Co.; Somerset Consolidated; Soundcast Co.; Southern Alloy; Southern Cast Products Specialty Casting; Springfield Aluminum Co.; Springfield Foundry; Stahl Specialty Co.; Stainless Foundry & Eng.; Standard Foundry Co.; Standard Foundry Products; Sterling Casting Corp.; Sterling Foundry Co.; Stillman White Co.; Stockham Valves & Fittings; Sturgis Foundry Co.; St. Anne's Foundry; St. Louis Steel Casting; St. Mary's Foundry; St. Paul Brass Foundry; Swayne, Robinson & Co.; Talladega Castings & Mach Co.; Talladega Foundry & Machine; Taylor & Fenn Co.; Teledyne Casting Service; Terrecorp; Texas Foundries; Trinity Valley Iron Works;

East Penn Foundry Co.; Unimatic Manufacturing Corp.; Union City Mold & Die Casting Corp.; Union Foundry Co.; United Brass Works; Universal Cast Iron Manufacturing Co.; Urick Foundry Co.; U.S. Magnet & Alloy Corp.; U.S. Pipe and Foundry; Utica Radiator Corp.; V & W Castings; Valley Brass; Varicast Northwest; Victaulic Co. of America; Wagner Castings Co.; Waterman Industries, Inc.; Waupaca Foundry; Wells Manufacturing Co.; West Michigan Steel Foundry; Western Foundry Co.; Westwick Foundry; Whitman Foundry; Whittaker Corp.; Woodland Aluminum Casting; Xenia Foundry & Machine.

Summary of the Application

Export Trade

1. Products

Any ferrous (iron or steel) or non-ferrous (e.g., aluminum, magnesium, bronze, brass, copper, and zinc) casting, whether finished or unfinished.

2. Services

Design services related to Products and related manufacturing processes; licensing of Technology Rights concerning Products and related processes.

3. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, know-how, and semiconductor mask works.

4. Export Trade Facilitation Services (as they relate to the export of Products, Services and Technology Rights)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; services related to compliance with customs requirements; transportation; trade documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; liaison with U.S. and foreign government agencies, trade associations, and banking institutions; and taking title to goods.

Export Markets

The export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) and Canada.

Export Trade Activities and Methods of Operation

1. ACMA and/or its members seek certification to:

a. Engage in joint bidding or other joint selling arrangements for Products and Services and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers of Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Services;

e. Solicit non-member suppliers to sell their Products and Services or offer their Export Trade Facilitation Services through the certified activities of ACMA and/or its Members;

f. License associated Technology Rights in conjunction with the sale of Products, but in all instances the terms of such licences shall be determined solely by negotiations between the licensor Member and the export customer without coordination with ACMA or any other Member;

g. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and

h. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets.

2. ACMA and/or its Members may enter into agreements wherein they agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products or Services in that country or market. In such agreements, (i) ACMA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through ACMA or the Member(s) acting as exclusive intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. ACMA, when acting as an Export Intermediary, will make its services available to any Member on non-discriminatory terms.

3. ACMA and/or its Members may exchange and discuss the following types of information solely about Export Markets:

a. Information (other than information about the domestic costs, domestic output, domestic capacity, domestic inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies, or methods) that is already generally available to the trade or public;

b. Information about sales or marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demand in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export, provided however that exchanges of information and discussions as to Product quality, source, and delivery dates must be on a transaction by transaction basis only;

d. Information about terms and conditions of contracts for sale in Export Markets to be considered and/or bid on by ACMA and its Members;

e. Information about joint bidding, selling, or servicing agreements for Export Markets and allocations of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about ACMA's or its Members' export operations, including without limitation sales and distribution networks established by ACMA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. ACMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by the ACMA itself, or by agreement with Members or other parties.

5. ACMA and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. ACMA and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sale or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means the member companies of ACMA, as listed in this notice, and subject to the provisions of this paragraph. New ACMA members may, from time to time, be incorporated in this certificate pursuant to the abbreviated amendment procedure described below. An abbreviated amendment shall consist of a written notification to the Department of Commerce and the Department of Justice stating changes in ACMA membership, identifying all new ACMA members that desire to become a Member under this certificate pursuant to the abbreviated amendment procedure, and certifying for each new ACMA member so identified its sales of Products in its prior fiscal year. Notice of new members so identified shall be published in the *Federal Register*. However, ACMA may withdraw one or more individual members from the application for the abbreviated amendment. If 30 days or more following publication in the *Federal Register*, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the certificate of the new members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the certificate of review to incorporate such new members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the *Federal Register* so amend the certificate of review, such amendment must be sought through the nonabbreviated amendment procedure. This same procedure may be utilized by

ACMA to delete one or more Members from the certificate.

Date: August 15, 1988.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 88-18747 Filed 8-17-88; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Marine Mammals: Proposed Modification of Permit; Dr. William A. Watkins (P70C)

Notice is hereby given that Dr. William A. Watkins, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts 02543, has requested a modification of Permit No. 573 issued on November 21, 1986 (51 FR 43422), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and the regulations governing endangered species permits (50 CFR Part 217-222).

The Permit Holder is requesting authorization to take twenty (20) sperm whales (*Physeter catodon*) by harassment and an additional, five (5) will be radio tagged per year.

Concurrent with the application of this notice in the *Federal Register*, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data on views, or requests for a public hearing on this proposed modification should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular Modification would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above modifications are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated August 15, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-18768 Filed 8-17-88; 8:45 am]

BILLING CODE 3510-22-M

DELAWARE RIVER BASIN COMMISSION

Amendment of Comprehensive Plan and Water Code of the Delaware River Basin

AGENCY: Delaware River Basin Commission.

ACTION: Notice.

SUMMARY: At its August 3, 1988 business meeting the Delaware River Basin Commission amended its Comprehensive Plan and Water Code in relation to criteria and operations formulae for emergency operations during a lower basin drought warning and drought.

EFFECTIVE DATE: This amendment shall take effect upon approval by the Parties to the U.S. Supreme Court Decree in *New Jersey v. New York*, 347 U.S. 995 (1954).

ADDRESS: Copies of the Commission's Water Code are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION: The Commission held public hearings on the proposed amendment on March 23 and April 27, 1988 as noticed in the March 15 and April 20, 1988 issues of the *Federal Register*. Based upon testimony received and further deliberation, the Commission has amended its Comprehensive Plan and Water Code of the Delaware River Basin.

Background and Rationale: In February 1983, the Commission received Interstate Water Management Recommendations of the Parties to the U.S. Supreme Court Decree of 1954 to the Delaware River Basin Commission Pursuant to Commission Resolution 78-20. These recommendations were unanimously agreed to by the Governors of the Commonwealth of Pennsylvania, the States of New York, New Jersey and Delaware and the Mayor of New York City. Recommendation 4 of these "Good

Faith" Recommendations called for the development of a plan for coordinated operation of existing Basin impoundments during drought periods to complement the operating formula for the New York City Delaware Basin reservoirs in order to maintain reliable supplies for essential uses, to conserve water, and to control salinity.

Recommendation 4 further specified that the plan should include operating criteria for the Beltzville, Blue Marsh, Walter, Prompton and Nockamixon projects and the hydroelectric power reservoirs in the Basin of the Pennsylvania Power and Light Company and Orange and Rockland Utilities, Inc.

Article 2 of the *Water Code of the Delaware River Basin* includes Commission policy relating to the conservation, development and utilization of Basin water resources.

The Commission's Comprehensive Plan and Article 2 of the *Water Code of the Delaware River Basin* are hereby amended by the addition of a new section 2.5.6 *Coordinated Operation of Reservoirs During a Lower Basin Drought Warning and Drought*, a summary of which follows.

As part of the assessment of the hydrologic condition of the lower basin, the Delaware River Master Advisory Committee will meet each spring to determine whether the New York City Delaware Basin reservoirs' excess release quantity should be saved. Normally, this excess release bank, set aside in the three New York City Delaware reservoirs under terms of the Decree, releases water over a seasonal period. Should the committee decide to save the banked water to provide drought assistance, it would be released only when needed to meet the Trenton flow objective of 3000 cfs.

The criteria for defining the three stages of lower basin hydrologic conditions of normal, drought warning and drought would be based on the storage levels in Beltzville and Blue Marsh Reservoirs. After exhausting the excess release quantity, the releases from Blue Marsh and Beltzville would maintain the flow objective at Trenton until their combined storage of 19.5 bg decreased by more than a third or about 6.5 bg, at which time a drought warning would be declared. The flow objective at Trenton would decrease and vary depending upon the location of the 250 mg/1 chloride salt front in the Estuary. Voluntary water conservation would be called for as would cutbacks in conservation releases from the lower basin reservoirs. The New Jersey Delaware and Raritan Canal Diversion would be reduced to 70 mgd from 100 mgd.

A lower basin drought emergency would be declared when the combined storage in Beltzville and Blue Marsh falls another third, or about 6 bg, thus leaving only 6 bg in those reservoirs. Mandatory conservation would be declared on nonessential water use and storage in the other lower basin reservoirs, including the power reservoirs and Lake Hopatcong, would be marshalled. The New Jersey Delaware and Raritan Canal diversion would again be reduced, at this point from 70 mgd to 65 mgd.

Once a lower basin drought emergency is declared by the Commission, the parties to the 1954 U.S. Supreme Court Decree, in consultation with the DRBC, shall consider and select one of six suggested "lower basin drought" reservoir operation plans or any other plan designed to meet then-existing conditions. The parties may, by unanimous agreement, modify or adjust any such operations plan. The Commission would then implement the agreed upon plan.

Considerations in formulating the agreed to plan include the amount of lower basin storage, the amount of New York City storage, storage in Lake Wallenpaupack, the Mongaup facilities, Lake Hopatcong as well as time of year of drought onset.

The lower basin drought would end when the storage levels in Beltzville and Blue Marsh Reservoirs exceed their respective lower basin drought storage level for 30 consecutive days or either one of these reservoirs spills, unless the Decree parties unanimously agree otherwise.

(Delaware River Basin Compact, 75 Stat. 688)

Susan M. Weisman,

Secretary.

August 10, 1988.

[FR Doc. 88-18672 Filed 8-17-88; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-33-NG]

Open Flow Gas Supply Corp.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has

issued an order to Open Flow Gas Supply Corporation (Open Flow) granting blanket authorization to import natural gas from Canada to the United States. The order issued in ERA Docket No. 88-33-NG authorizes Open Flow to import up to 55 Bcf per day of natural gas over a two-year period beginning on the first date of delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, August 12, 1988.
Constance L. Buckley,
*Acting Director, Office of Fuels Programs,
 Economic Regulatory Administration.*
 [FR Doc. 88-18783 Filed 8-17-88; 8:45 am]
 BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER84-177-000 et al.]

Duke Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 12, 1988

Take notice that the following filings have been made with the Commission:

1. Duke Power Company

[Docket No. ER84-177-000]

Take notice that on August 3, 1988, Duke Power Company tendered for filing pursuant to Commission Opinion and Order on Initial Decision, a compliance filing which excludes the separately stated Standby Charge for Schedule 10.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Coso Energy Developers

[Docket No. QF86-591-001]

On July 28, 1988, Coso Energy Developers (Applicant), c/o California Energy Company, Inc., 601 California Street, San Francisco, California 94108, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The geothermal small power production facility will be located within the Naval Weapons Center of the United

States Navy at China Lake, near Ridgecrest, California. The facility will consist of three turbine generating units. The primary energy source will be geothermal fluids. The original application was filed by California Energy Company, Inc., and was granted on August 6, 1986 (36 FERC ¶ 62,150).

The recertification is requested due to transfer of ownership from China Lake Joint Venture to the Applicant; the relocation of the facility by less than a mile to the east of the originally proposed location; the inclusion of a 29.5-mile 220 kV transmission line and interconnection facilities; and increase in the net electric power production capacity of the facility from 79.5 MW to 79.6 MW. All other facility's characteristics remain unchanged.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Colorado

[Docket No. ER88-548-000]

Take notice that on August 2, 1988, Public Service Company of Colorado (Public Service) tendered for filing a proposed change in its Power Purchase and Interchange Agreement (Agreement) with Colorado-Ute Electric Association, Inc. (Colorado-Ute). Public Service states that the proposed change is a Supplement to Public Service's Agreement with Colorado-Ute, dated April 30, 1982, on file with the Commission under Public Service's FERC Rate Schedule No. 37.

Public Service states that the Supplement to the Agreement with Colorado-Ute provides for various increases and reductions in load at various delivery points.

Public Service states that copies of the filing were served upon all parties to the Agreement and affected state commissions.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Oklahoma Gas and Electric Company

[Docket No. ER88-550-000]

Take notice that on August 1, 1988, Oklahoma Gas and Electric Company (OG&E) tendered for filing an Amended Appendix "A" dated July 14, 1988, between OG&E and Oklahoma Municipal Power Authority (OMPA).

The amendment modified the Transmission Service Agreement, Appendix "A" regarding the Points of Delivery for Power and Energy into OMPA's system. The parties request an effective date of August 1, 1988, and

request a waiver of the Commission's notice requirements.

Copies of this filing have been served on OMPA, the Corporation Commission of the State of Oklahoma and the Arkansas Public Service Commission.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER88-551-000]

Take notice that on August 5, 1988, Pacific Power & Light Company, an assumed business name of PacifiCorp, tendered for filing, in accordance with § 35.30 of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Montana and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Montana (Bonneville's Docket No. 5-A4-8701). The Revised Appendix 1 calculates the ASC for the state of Montana applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective December 4, 1987, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Montana Public Service Commission and Bonneville's Direct Service Industrial Customers.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Public Service Company

[Docket No. ER88-547-000]

Take notice that on August 2, 1988, Iowa Public Service Company (IPS) tendered for filing an executed Firm Peaking Capacity Sales Agreement dated April 29, 1988, whereby IPS will supply St. Joseph Light & Power Company (St. Joseph) with firm electric capacity and associated energy, commencing June 1, 1988 and continuing through November 30, 1988. IPS requests that the negotiated Agreement be made effective as of June 1, 1988.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER88-532-000]

Take notice that on August 4, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing a revised letter to its July 25, 1988 filing. PG&E states that it has not waived its rights

with regard to termination of this service pursuant to the City of Santa Clara Interconnection Agreement and Exhibit A-4 thereto.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Union Electric Company

[Docket No. ER88-489-000]

Take notice that on August 5, 1988, Union Electric Company tendered for filing additional cost support data to Transmission Service Transaction 1, dated May 27, 1988, with the City of Jackson, MO providing the transmittal of power and energy from other sources.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Dayton Power and Light Company

[Docket No. ER88-549-000]

Take notice that on August 2, 1988, Dayton Power and Light Company (DPL) tendered for filing an Amendment to its Interconnection Agreement with Ohio Power Company (OP).

The purpose of the Amendment is to update the Emergency, Short-Term and Non-Displacement Schedules which are part of the Agreement.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18752 Filed 8-17-88; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

August 12, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

- a. *Type of Application:* Transfer of License.
- b. *Project No.:* 4026.
- c. *Date Filed:* August 10, 1988.
- d. *Applicant:* Androscoggin Reservoir Co. and Azischohos Hydro Co., Inc.
- e. *Name of Project:* Azischohos.
- f. *Location:* On Magalloway River, Oxford Co., ME.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact:* John W. Bernotavicz, Esq., Curtis Thaxter Stevens Broader and Micoleau, One Canal Plaza, Portland, ME 04112, (207) 775-2361.
- i. *FERC Contact:* William Guey-Lee, (202) 376-9536.
- j. *Comment Date:* August 30, 1988.
- k. *Description of Transfer:* Androscoggin Reservoir Co. and Azischohos Hydro Co., Inc. proposes to transfer the license to Androscoggin Reservoir Co., Azischohos Hydro Co., Inc., and NYNEX Credit Company.

The proposed transfer is a sale of project equipment, an assignment of the interests of Azischohos Hydro Company, Inc. ("Azischohos") as lessee of certain project property, and an assignment of the interests of Azischohos under its power contract and other project rights to NYNEX Credit Company, followed immediately by a lease of project equipment and sub-lease and re-assignment of such interests and other rights back to Azischohos pursuant to a leveraged lease. The transfer will provide a permanent ownership and financial arrangement, after successful completion of construction by Azischohos.

1. This notice also consists of the following standard paragraphs: B and C.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204-RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18704 Filed 8-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-205-001]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 15, 1988.

Take notice that on August 9, 1988, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) filed the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Appendix A

Substitute Second Revised Sheet Nos. 62 and 63.

Appendix B

Substitute Original Sheet No. 4A.

Appendix C

Alternate Substitute Original Sheet No. 4A.

Appendix D

Revised Substitute Original Sheet No. 4A.

All of the above tariff sheets are proposed to become effective on July 1, 1988.

Alabama-Tennessee states that the foregoing tariff sheets are being filed

pursuant to the Commission's order issued on July 28, 1988 in Docket No. RP88-205-000. The tariff sheets in Appendix A are said to comply with Ordering Paragraph C of the July 28 Order, while those in Appendices B, C and D are filed pursuant to Ordering Paragraph B and reflect alternate methods of allocating take-or-pay costs. Alabama-Tennessee specifically requests that the tariff sheets contained in Appendices A and D be accepted.

Alabama-Tennessee is proposing to amortize the take-or-pay costs over a 36-month period. According to Alabama-Tennessee, that is the maximum amortization period being offered by Tennessee Gas Pipeline Company, its upstream pipeline supplier.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18753 Filed 8-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-135-002]

Caprock Pipeline Co.; Tariff Filing

August 12, 1988.

Take notice that on August 8, 1988, Caprock Pipeline Company (Caprock) 550 Westlake Park Blvd., Suite 170 Houston, Texas 77079, submitted its FERC Gas Tariff, Revised Original Volume No. 3. The Tariff filing sets forth rates, terms and conditions for gas transportation service.

Caprock states that its tariff filing is designed to bring Caprock's open-access transportation tariff, first filed on June 30, 1986, into compliance with the Commission's Orders dated July 30, 1986, and July 22, 1988. The revised tariff: (1) Sets out revised transportation rates which include minimum and maximum rates separately identifying cost components attributable to transportation and gathering costs, (2) includes a cost basis for rates, (3) expresses rates on an MMBtu basis, (4) omits the \$2,000.00 non-refundable processing fee formerly required by Caprock, and (5) contains specific gas balancing language, all as required by the Commission's July 22, 1988 Order.

The revised tariff is filed to be made effective on July 1, 1986. Caprock has requested such waiver of the Commission's regulations as may be required in order to permit the proposed effective date.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's regulations. All such motions or protests must be filed on or before August 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18705 Filed 8-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-3-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

August 12, 1988.

Take notice that on August 5, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission Ninth Substitute Twenty-First Revised Sheet No. 7 of its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on August 1, 1988.

According to Granite State, the instant filing adjusts its projected purchase gas

costs to reflect an unanticipated increase in the spot market supplies that it expects to purchase during the current quarter. Granite State further states that, absent the proposed adjustment, it is exposed to undercollections of its current gas costs. The instant filing, according to Granite State, reflects an increase of \$0.0432 per MMBtu in purchased gas costs compared to the projected gas costs in its most recent quarterly filing, effective July 1, 1988.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18706 Filed 8-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RI88-30-000]

Phillips 66 Natural Gas Co.; Protest

Issued: August 12, 1988.

Take notice that on July 20, 1988, Phillips 66 Natural Gas Company (Phillips) filed a protest pursuant to § 271.1104(h)(4) of the Commission's regulations, 18 CFR 271.1104(h)(4) (1987).¹ Phillips states that it has requisite contractual authority to collect compression, delivery, and other production-related cost allowances under contracts identified by the Commission in orders issued on March

¹ This section provides procedures whereby first sellers and any others may make a showing that certain gas purchase contracts allow for recovery of compression allowances pursuant to an area rate clause.

24 and May 20, 1988 respectively in the above-captioned docket. See 43 FERC ¶ 61,298 (1988), *reh'g* denied 44 FERC 61,091 (1988). Phillips requests that the Presiding Administrative Law Judge summarily find that Phillips is contractually authorized to collect the production-related cost allowances it seeks. Alternatively, Phillips requests the right to make a full showing of its contract authority by submission of evidence and argument.

Any person desiring to be heard or to make any protest concerning Phillips' claim should file a protest or petition to intervene in accordance with the requirements of Rules 211 or 214 of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214). All such filings should be made not later than 30 days following publication of this notice in the *Federal Register* and should be addressed to Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Protests will be considered by the Commission in determining the action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with Rule 214.

In addition to publishing the full text of this document in the *Federal Register* the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18709 Filed 8-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-1-55-001]

Questar Pipeline Co.; Filing

August 12, 1988.

Take notice that on August 9, 1988, Questar Pipeline Company (Questar) filed Substitute Fifteenth Revised Sheet No. 12 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective September 1, 1988.

Questar states that the purpose of this filing corrects a minor technical error on the tariff sheet originally filed on July 29, 1988.

Questar states that a copy of this filing was served upon its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18707 Filed 8-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-1-56-001]

Valero Interstate Transmission Co.; Filing

August 12, 1988.

Take notice that on August 8, 1988, Valero Interstate Transmission Company (Valero) filed Substitute 8th Revised Sheet No. 14.2 to Original Volume No. 1 and Substitute 13th Revised Sheet No. 6 to Original Volume No. 2 as part of its FERC Gas Tariff.

Valero states that the purpose of this filing is to correct footnote number four at the bottom of each sheet to state the average cost in the last scheduled PGA rather than the previous scheduled PGA.

Valero states that service of this filing has been made on the affected parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18708 Filed 8-17-88; 8:45 am]

BILLING CODE 6217-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3431-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and are available to the public for review and comment. The ICRs describe the nature of the information collection and their expected costs and burdens; where appropriate, they include the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Milk Cow and Population Survey (EPA ICR# 1221).

Abstract: Farms, within a 300 kilometer radius of the Nevada nuclear test site, which produce milk from cows or goats for local usage or commercial distribution, are requested to participate in this survey. Respondents are asked to provide farm identification/location information, number of cows/goats, and type of feed used.

Burden Statement: The estimated public reporting burden for this collection of information is 0.5 hour per respondent per year. This estimate includes the time for participating in a short interview.

Respondents: Farms

Estimated No. of Respondents: 565

Estimated Total Annual Burden on Respondents: 283 hours

Frequency of Collection: 1 response per year

Office of Pesticides and Toxic Substances

Title: Records of PCB Use, Storage and Disposal. (EPA ICR# 0583).

Abstract: Owners or operators of facilities that use, store or dispose of polychlorinated Biphenyls (PCBs) must prepare and maintain records on the PCBs handled at their facilities. The Agency uses these data to monitor the movement and ultimate disposal of PCBs and for compliance purposes.

Burden Statement: The estimated public reporting burden for this collection of information is 35 hours per

respondent. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed and completing and reviewing the collection of information.

Respondents: Users, storers, and disposers of PCBs.

Estimated No. of Respondents: 5501

Frequency of Collection: Annually

Total Estimated Annual Burden:

192,535 hours

Send comments regarding the burden estimates, or any other aspect of these collections of information, including suggestions for reducing the burdens, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St., SW., Washington, DC 20460.

and

Nicolas Garcia (ICR# 1221) and Tim Hunt (ICR# 0583), Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395-3084).

Date: August 10, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88-18733 Filed 8-17-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 11, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0347.

Title: Section 97.71, Spread spectrum logs.

Action: Extension.

Respondents: Individuals or households.

Frequency of Response:

Recordkeeping requirement.

Estimated Annual Burden: 25

Recordkeepers; 25 Hours.

Needs and Uses: The recordkeeping requirement contained in § 97.71 is necessary to document all spread spectrum transmissions by amateur radio operators. It consists of a technical description of the transmission signal, pertinent parameters describing the transmitted signal, general description of information, method and frequencies used for station identification and date of beginning and date of ending use of each type of transmitted signal. The information is used by FCC staff during inspection and investigations to ensure compliance with applicable rules.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-18763 Filed 8-17-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. CL-88-138]

Common Carrier Public Mobile Services Information; Dates and Filing Requirements Announced for Acceptance of Applications for Block 3 Cellular RSAs

August 4, 1988.

During the month of October, 1988 applications for Block 3 cellular RSAs will be accepted for filing. Specific filing dates and markets appear on pages 5 and 6 of this notice.

All applications for these markets must be filed in Pittsburgh, Pennsylvania. Applications sent via U.S. Postal Service must be addressed as follows: Federal Communications Commission, Cellular Telephone—Market No. (Enter Market Number), P.O. Box 371995M, Pittsburgh, PA 15250-7995. Applications shipped via common carrier or hand carrier must be brought to the following address between the hours of 8:30 a.m. and 5:00 p.m.: Federal Communications Commission, Cellular Telephone Filing, Strip Commerce Center, 28th and Liberty Avenue, Pittsburgh, PA 15222.

Directions to the Strip Commerce Center filing location appear on page 4 of this notice.

Note.—If the number of applications filed in the previous block of RSAs is excessive, these dates may be modified. If this is necessary a new public notice will be issued.

Acceptance of Applications for Cellular RSAs in Block 3

October 5 to October 7

Texas

652. Texas 1—Dallam

653. Texas 2—Hansford
654. Texas 3—Parmer
655. Texas 4—Briscoe
656. Texas 5—Hardeman
657. Texas 6—Jack
658. Texas 7—Fannin
659. Texas 8—Gaines
660. Texas 9—Runnels
661. Texas 10—Navarro
662. Texas 11—Cherokee
663. Texas 12—Hudspeth
664. Texas 13—Reeves
665. Texas 14—Loving
666. Texas 15—Concho
667. Texas 16—Burleson
668. Texas 17—Newton
669. Texas 18—Edwards
670. Texas 19—Atascosa
671. Texas 20—Wilson
672. Texas 21—Chambers

October 12 to October 14

Missouri

504. Missouri 1—Atchison
505. Missouri 2—Harrison
506. Missouri 3—Schuyler
507. Missouri 4—De Kalb
508. Missouri 5—Linn
509. Missouri 6—Marion
510. Missouri 7—Saline
511. Missouri 8—Callaway
512. Missouri 9—Bates
513. Missouri 10—Benton
514. Missouri 11—Moniteau
515. Missouri 12—Maries
516. Missouri 13—Washington
517. Missouri 14—Barton
518. Missouri 15—Stone
519. Missouri 16—Laclede
520. Missouri 17—Shannon
521. Missouri 18—Perry
522. Missouri 19—Stoddard

October 19 to October 21

Kansas

428. Kansas 1—Cheyenne
429. Kansas 2—Norton
430. Kansas 3—Jewell
431. Kansas 4—Marshall
432. Kansas 5—Brown
433. Kansas 6—Wallace
434. Kansas 7—Trego
435. Kansas 8—Ellsworth
436. Kansas 9—Morris
437. Kansas 10—Franklin
438. Kansas 11—Hamilton
439. Kansas 12—Hodgeman
440. Kansas 13—Edwards
441. Kansas 14—Reno
442. Kansas 15—Elk

Louisiana

454. Louisiana 1—Claiborne
455. Louisiana 2—Morehouse
456. Louisiana 3—De Soto
457. Louisiana 4—Caldwell
458. Louisiana 5—Beauregard
459. Louisiana 6—Iberville
460. Louisiana 7—West Feliciana
461. Louisiana 8—St. James
462. Louisiana 9—Plaquemines

October 26 to October 28

Arkansas

- 324. Arkansas 1—Madison
- 325. Arkansas 2—Marion
- 326. Arkansas 3—Sharp
- 327. Arkansas 4—Clay
- 328. Arkansas 5—Cross
- 329. Arkansas 6—Cleburne
- 330. Arkansas 7—Pope
- 331. Arkansas 8—Franklin
- 332. Arkansas 9—Polk
- 333. Arkansas 10—Garland
- 334. Arkansas 11—Hempstead
- 335. Arkansas 12—Ouchita

Oklahoma

- 596. Oklahoma 1—Cimarron
- 597. Oklahoma 2—Harper
- 598. Oklahoma 3—Grant
- 599. Oklahoma 4—Nowata
- 600. Oklahoma 5—Roger Mills
- 601. Oklahoma 6—Seminole
- 602. Oklahoma 7—Beckham
- 603. Oklahoma 8—Jackson
- 604. Oklahoma 9—Garvin
- 605. Oklahoma 10—Haskell

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-18764 Filed 8-17-88; 8:45 am]

BILLING CODE 6712-01-M

Radio Broadcasting; Radio Advisory Committee Meeting

August 11, 1988.

The next meeting of the Advisory Committee on Radio Broadcasting will be held at 1:30 p.m., Tuesday, September 13, 1988, in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street, NW., Washington, DC.

The Committee will consider:

- Reports from the Allocations and Technical Subgroups;
- Possible improvements to serve on the AM band through revisions to the technical AM Broadcast Rules;
- Use of the expanded AM band (1605-1705 kHz) in the United States;
- FM Directional Antennas;
- FM Class A upgrades;
- Creation of FM Class C3;
- FM Translators; and
- Other business relating to radio broadcasting matters.

The meetings of the Committee are public, and are open for participation by all interested persons. The meeting scheduled for September 13, 1988 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information, please contact the Committee Chairman, Mr. Larry

Eads, at FCC Headquarters. His telephone number is (202) 632-6485.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-18765 Filed 8-17-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committees; Meeting

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedules and proposed agendas of the forthcoming meetings of the agency's initial review committees, national advisory councils, and a Board of Scientific Counselors in the month of September 1988. These committees will be performing initial review of applications for Federal assistance and evaluating performance of staff scientists. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 210(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Mental Health Small Grant Review Committee, NIMH

Date and Time: September 8-9: 9:00 a.m.

Place: Holiday Inn Crowne Plaza Hotel, 1750 Rockville Pike, Rockville, Maryland 20852

Status of Meeting:

Open—September 8: 9:00-10:00 a.m.

Closed—Otherwise

Contact: Kimberly Crown/Monica Woodfork, Room 9C-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4843

Purpose: The committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: National Advisory Council on Drug Abuse, NIDA

Date and Time: September 13-14: 9:00 a.m.

Place: Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814

Status of Meeting:

Open—September 13: 9:00 a.m.-noon;
September 14: 9:00 a.m.-500 p.m.

Closed—Otherwise

Contact: Sheila Gardner, Room 8A-54, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-0441

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Committee Name: National Advisory Mental Health Council, NIMH

Date and Time: September 14-16: 9:00 a.m.

Place: Parklawn Building, Conference Rooms G and H, 5600 Fishers Lane, Rockville, MD 20857

Status of Meeting:

Open—September 14-15: 9:00 a.m.-5:00 p.m.

Closed—Otherwise

Contact: Rachel Townson, Room 9C-105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3367

Purpose: The Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect approval of applications for, and amount of, these grants.

Committee Name: National Advisory Council on Alcohol Abuse and Alcoholism, NIAAA

Date and Time: September

Place: National Institutes of Health, Conference Room #6, Building 31C, 6th Floor, 9000 Rockville Pike, Bethesda, MD 20892

Status of Meeting:

Open—September 19: 10:30 a.m.–5:00 p.m.

Closed—Otherwise

Contact: James Vaughan, Room 16C-20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4375

Purpose: The Council advises the Secretary, Department of Health and Human Services, regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Committee Name: Board of Scientific Counselors, NIAAA

Date and Time: September 28–29: 9:00 a.m.

Place: Flow Building, Room 51, 12501 Washington Avenue, Rockville, MD 20852

Status of Meeting:

Open—September 28: 9:00–9:30 a.m.

Closed—Otherwise

Contact: Boris Tabakoff, National Institutes of Health, Building 10, Room 3C103, 9000 Rockville Pike, Bethesda MD 20892, (301) 496-8996

Purpose: The Board provides expert advice to the Director, DIBR, NIAAA, and through him to the Director, NIAAA, on the alcohol intramural research program. This advice is derived from periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Committee Name: Mental Health Acquired Immunodeficiency Syndrome Research Review Committee, NIMH

Date and Time: September 29–October 2: 8:30 a.m.

Place: Days Inn, 1775 Rockville Pike, Rockville, MD 20852

Status of Meeting:

Open—September 29: 8:30–9:15 a.m.

Closed—Otherwise

Contact: Irma Fisher, Room 9C-15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6470

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for

support of activities in the fields of research and research training activities in the areas of psychoneuro-immunological, psychosocial, behavioral, and psychological aspects of AIDS as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Substantial information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, Room 16C-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4375; Ms. Camilla Holland, NIDA Committee Management Officer, Room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2620; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9-105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Date: August 12, 1988.

Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88-18694 Filed 8-17-88; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control**Request for Nominations of Candidates To Serve on the Mine Health Research Advisory Committee**

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), is soliciting nominations for membership on the Mine Health Research Advisory Committee (MHRAC). On December 24, 1988, four vacancies will occur. The MHRAC, which is authorized by the Federal Mine Safety and Health Act of 1977, advises the Department of Health and Human Services on matters related to intramural and extramural research for the nation's miners. The direction, scope, and scientific quality of the NIOSH mine health research program are considered by the Committee.

A range of disciplines is represented on the Committee, including occupational medicine, industrial hygiene, pulmonary medicine, radiology, pathology, epidemiology, biostatistics, public health, environmental health, and ergonomics. Mining experience is desirable, but is not necessary for every position on the Committee. Emphasis is placed on scientific credentials.

The following information is requested: name, affiliation, address, telephone number, and a recent curriculum vitae. Nominations should be sent by August 29, 1988, to: Mr. Melvin L. Myers, Executive Secretary, MHRAC, NIOSH, CDC, D-37, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephones: FTS: 236-3901, Commercial: 404/639-3901.

Dated: August 12, 1988.

Elvin Hilyer,
Associate Director for Policy Coordination,
Centers for Disease Control.

[FR Doc. 88-18711 Filed 8-17-88; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 88M-0271]

Barnes-Hind, Inc.; Premarket Approval of Occucoat™

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Barnes-Hind, Inc., Sunnyvale, CA, for premarket approval, under the Medical Device Amendments, of 1976, of Occucoat™. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 12, 1988, of the approval of the application.

DATE: Petitions for administrative review by September 19, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert A. Phillips, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8221.

SUPPLEMENTARY INFORMATION: On April 22, 1987, Barnes-Hind, Inc., Sunnyvale, CA 94086, submitted to CDRH an application for premarket approval of Occucoat™. Occucoat™ is indicated for use as a surgical aid in anterior segment procedures including cataract extraction and intraocular lens implantation.

On July 23, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On July 12, 1988, CDRH approved the application by

a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Robert A. Phillips (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 19, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and

re delegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 11, 1988.

Linda A. Suydam,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. 88-18696 Filed 8-17-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Facilities Improvement and Repair Priority List for Fiscal Year 1989

August 10, 1988.

AGENCY: Office of Construction Management, Interior.

ACTION: Notice of Facilities Improvement and Repair Priority List for Fiscal Year 1989.

The Facilities Improvement and Repair (FI&R) list has been prepared for Fiscal Year 1989 in accordance with House Report Number 98-886, page 52. "To avoid some of the problems experienced in the past, the Committee directs the Bureau to revise the FI&R Priority System by publishing in the *Federal Register* by October 1 of each fiscal year, the national list of projects expected to be accomplished that year within the available funds."

The notice for FY 1989 provides the approved list of FI&R projects. Construction of these projects is subject to the availability of funds. The list is based upon the Bureau's criteria for ranking projects as published in the *Federal Register*/Volume 51, Number 30/Thursday, February 13, 1986/Page 5415.

The projects for FY 1989 are:

Bureau-Wide Code Compliance (Phase 1)

Bureau-Wide Roof Repair (Phase 1)

Multi-Area Telecommunications Improvements and Repair

Navajo Area-Wide Gas Line Replacement (Phase 2)

Flandreau School (Phase 1), South Dakota

Standing Rock Community High School, North Dakota

Haskel Indian Junior College, Kansas

Dzilh-Na-O-Dith-Hle School, New Mexico

Ft. Hall Headquarters and Elementary School, Idaho

FOR FURTHER INFORMATION CONTACT: Arthur M. Love, Jr., Director, Office of Construction Management, Department of the Interior, 18th & C Streets, NW.,

Mail Stop 2415, Washington, DC 20240, (202) 343-3403.

Rick Ventura,

Assistant Secretary, Policy, Budget & Administration.

[FR Doc. 88-18714 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Indian Affairs

School Construction Priority List, FY 1990

AGENCY: Office of Construction Management, Interior.

ACTION: Notice of list of proposed school construction projects.

This notice is published in exercise of authority delegated by the Secretary of Interior to the Assistant Secretary-Indian Affairs by 209 DM8. The school construction priority list has been revised for FY 1990 as required by Pub. L. 95-561 (92 Stat. 2319 section 1125(O)) which requires that: "At the time any budget request for school construction is presented, the Secretary shall publish in the *Federal Register* and submit with the budget request the current list of all school construction priorities".

This notice for FY 1990 provides the current revised list of proposed construction projects. Construction of these projects is subject to the availability of funds and/or the status of currently committed construction projects approved by Congress. The Choctaw Central Elementary School is a committed project.

The current list of school construction projects applies to FY 1990 and is based upon the Bureau's criteria for ranking projects based upon "unhoused" students. A revised list will be developed and published for each succeeding fiscal year. The BIA, Contract and Previously Private School Construction Ranking-FY 1990 is:

Choctaw Central Elementary School (MS)¹

Laguna Middle School (NM)

Coeur d'Alene Tribal School (ID)

Pine Ridge High School (SD)

Dunseith Indian Day School (ND)

Many Farms High School (AZ)

Seba Delkai Boarding School (AZ)

Lower Brule School (SD)

Cheyenne River School (SD)

Crow Creek School (SD)

Riverside Indian School (OK)

Eastern Navajo High School (NM)

¹ Congressionally Mandated Project

FOR FURTHER INFORMATION CONTACT: Arthur M. Love, Jr., Director, Office of Construction Management, Department

of the Interior, 18th C Streets, NW., Mail Stop 2415, Washington, DC 20240, (202) 343-3403.

Rick Ventura,

Assistant Secretary, Policy, Budget and Administration.

[FR Doc. 88-18715 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

Intent to Prepare an EIS on Placer Mining Activities, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a drainage-wide environmental impact statement on multiple mining operations in the Tuluksak River drainage; and to request comments on the scoping of this environmental impact statement.

SUMMARY: Pursuant to section 102 (2)(c) of the National Environmental Policy Act of 1969, as amended, the Department of Interior, Bureau of Land Management (BLM) intends to prepare an environmental impact statement for placer mining in the Tuluksak River drainage in southwestern Alaska.

The decision to prepare an EIS should not be interpreted as a reversal of the decision of the Department of the Interior regarding Northland Gold Dredge operation. Preparation of an EIS for the Tuluksak Drainage has been prompted by proposed plans of operation submitted by other mine operators. The purpose of the EIS is to determine the direct and indirect impacts of multiple placer mining operations within the Tuluksak watershed, particularly water quality, subsistence uses, access, and fisheries impacts. The analysis will address mining operations anticipated within the reasonably foreseeable future that would occur within the Tuluksak River drainage. BLM manages and or regulates federal claims in the area encompassed by this EIS under the following:

- (1) General Mining Law of 1872, 30 U.S.C. 22 *et seq.*, as amended
- (2) Federal Land Policy and Management Act (FLPMA) 1976
- (3) 43 CFR Part 3809
- (4) BLM Alaska Handbook H 3809-1, and other applicable laws and regulations relating to specific resources. Possible alternatives include: Allowing placer mining under various standards of review which modify timing, size and location of proposed actions, which would assure against unnecessary and undue degradation consistent with the requirement of 43 CFR Part 3809. BLM would review

proposed and existing plans of operation according to various BLM guidelines. Other agency permitting would be done in accordance with existing standards. This is the Proposed Action. Under the No Active alternative, applications for plans of operation or notices would be processed by BLM. However, administrative, legislative and or judicial means would be employed to prevent mining. It is understood that implementation of the No Action alternative might be in conflict with existing federal and State law. However, federal regulations governing the content of EISs require an analysis of a No Action alternative. This alternative may be used as a baseline to which other alternatives can be compared. Alternatives to the Proposed Action and the No Action Alternatives will be developed during the scoping period which will run till the end of September 1988. The timeframe for public scoping will also be announced in the local newspapers and supplemented as appropriate by other means.

The purpose of scoping is to focus the analysis on significant issues and reasonable alternatives to the considered. This will be done by sending a summary of current issues, comments, and concerns to anyone requesting them. All interested parties are invited to participate in the scoping process by either writing or calling the EIS Project Manager to add additional issues, concerns, or relevant alternatives. No public meeting is planned for scoping because previous public meetings have identified numerous issues associated with placer mining proposed for previous years, including activities which would have been conducted in 1988. Federal and State agencies specifically invited to participate in the scoping includes, but is not limited to:

Alaska Department of Environmental Conservation
Alaska Department of Fish and Game
Alaska Department of Natural Resources
U.S. Army Corps of Engineers
U.S. Bureau of Indian Affairs
U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service
U.S. National Park Service

ADDRESSES: To be considered in the scoping process, all written comments and suggestions must be received by Anchorage District Manager, Attn. Tuluksak EIS Project Manager, Bureau of Land Management, 701 C Street, Box 13, Anchorage Alaska 99513, no later than October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Tuluksak EIS Project Manager, Bureau

of Land Management, 701 C St., Box 13, Anchorage, Alaska 99513, (907) 271-3114.

John Santora,

Acting State Director.

[FR Doc. 88-18710 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-JA-M

[CA-930-08-4341-09]

Availability of Final Environmental Impact Statements; California Vegetation Management Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement for the California Vegetation Management Program.

SUMMARY: Notice is hereby given of the availability of the Final Environmental Impact Statement for the California Vegetation Management Program on BLM administered lands in California and northwest Nevada. The EIS was prepared to address the impacts resulting from proposed manual, mechanical, prescribed burning and chemical control of vegetation on public lands. The EIS also includes a risk assessment and worst-case analysis of impacts on human health from using herbicides as proposed by the program.

Comments on the EIS as well as those received during the review of the Draft EIS will be considered in the decision process. A decision regarding vegetation management will be prepared and issued after September 30, 1988.

A limited number of copies of the California Vegetation Management EIS are available from: Mark Blakeslee, Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA 95825, (916) 978-4725.

DATE: The public comment period is open for 30 days through September 30, 1988. Comments received after that date may not be considered in the Record of Decision.

ADDRESSES: Written comments may be sent to the California Vegetation Management EIS Team Leader, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Mark Blakeslee, California State Office (916) 978-4725.

Dated: August 10, 1988.

Ed Hastey,

State Director,

[FR Doc. 88-18720 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-40-M

[AK-975E-08-4213-22]

Change of Address for BLM-Alaska's Fairbanks Support Center, Arctic District, Kobuk District and Steese/White Mountains District

The Bureau of Land Management's Fairbanks Support Center, Arctic District, Kobuk District and Steese/White Mountains District offices in Fairbanks, Alaska will move to a new address. The former address for these offices was 1541 Gaffney Road, Fairbanks, Alaska 99703. After September 6, 1988, the address will be: 1150 University Avenue, Fairbanks, Alaska 99709. Phone (907) 474-2200.

Direct questions to: William Robertson, Bureau of Land Management, Fairbanks Support Center, 1541 Gaffney Road, Fairbanks, AK 99703, Telephone (907) 356-5309.

Date: August 8, 1988.

James S. Murray,

Manager, Fairbanks Support Center.

[FR Doc. 88-18721 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-84-JA

[ID-030-08-4212-13]

Realty Action; Exchange of Public Lands in Bannock County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of Public Land in Bannock County, ID.

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T.7S., R.35E., Boise Meridian

Section 23: SWSE

Section 26: N2NW, NWNE

In exchange for these lands, the Federal Government will acquire a tract of non-federal land in Bannock County from L.M. Bull, Jr., described as follows:

T.7S., R.35E., Boise Meridian

Section 26: SESW, SWSE

Section 35: NENW, NWNE

The purpose of the exchange is to acquire the non-federal lands for use in wildlife habitat and riparian management. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with county and state officials. The public interest will be well served by making the exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money

will be used to equalize the values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Those rights for road purposes as have been granted to the Federal Highway Administration under serial number I-22928.

3. Excepting and reserving the United States a perpetual right-of-way over and across a strip of land 100 feet wide along an existing trail crossing the SWSE, Section 23; NWNE, Section 26; T.7S., R.35E., for public access and future development of a road.

The publication of notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws.

As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including the environmental assessment is available for review at the Idaho Falls District, Pocatello Resource Area Office, 250 South 4th Avenue, Federal Building, Room 172, Pocatello, Idaho 83201.

For a period of 45 days interested parties may submit comments to the Idaho Falls District Office, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

Dated: August 10, 1988.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 88-18675 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-GG-M

[ES-940-08-4520-13; (ES-039037, Group 23)]

Filing of Plats of Dependent Resurvey, Subdivisions of Section and Survey of the Rend Lake Acquisition Boundary; Illinois

August 9, 1988.

1. The plat, in four sheets, of the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the survey of the subdivision of sections 1, 2, 3, 4, 10 and 11, and the Rend Lake acquisition

boundary, Township 6 South, Range 2 East, third Principal Meridian, Illinois, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 23, 1988.

2. The dependent resurvey and survey was made at the request of the Corps of Engineers.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., September 23, 1988.

4. Copies of the plats will be made available upon request and prepayment of the reproduction fee of \$4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-18676 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-GJ-M

[AZ-920-08-4220-10; A-23294]

Proposed Withdrawal; Opportunity for Public Meeting; Arizona

August 10, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, recently acquired 61,356 acres of private land within the boundaries of the Coronado National Forest under the provisions of the General Exchange Act of 1922. The land is surrounded by an existing withdrawal for the Fred Lawrence Whipple Observatory (FLWO). The existing withdrawal protects the large investment in scientific research at the Observatory. The Forest Service has now filed an application to withdraw the 61,356 acres of land from mineral entry. This application will complete the protection of the facilities and research efforts at FLWO. This notice closes the land for up to 2 years from location and entry under the United States mining laws.

DATE: Comments and requests for meeting should be received on or before November 16, 1988.

ADDRESS: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT:
Lisa Schaalman, BLM, Arizona State
Office, 602-241-5534.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian, Arizona
Coronado National Forest

T. 20 S., R. 14 E.,
MS 2409 lying within sections 22, 23, 26,
and 27.

The area described aggregates 61,356 acres in Santa Cruz County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the *Federal Register* at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the *Federal Register*, the land will be segregated as specified above unless the application is denied, cancelled or the withdrawal is approved prior to that date. The land remains open to mineral leasing and to those laws governing management and disposition of National Forest land by the Forest Service, including lease, easement, permit and management, utilization and disposal of vegetative resources. Current administrative jurisdiction over the segregated land will not be affected by the temporary segregation.

John T. Mezes,
Chief, Branch of Lands and Minerals
Operations.

[FR Doc. 88-18677 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-08-4220-10; CA 5200]

Termination of Segregation and Opening of Lands; California

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice.

SUMMARY: The segregative effect of a proposed withdrawal of 15 acres of land requested by the Department of the Army, Sacramento District Corps of Engineers, terminated on July 27, 1980.

FOR FURTHER INFORMATION CONTACT:
Viola Andrade, BLM California State
Office, 2800 Cottage Way, Sacramento,
California 95825, (916) 978-4815.

SUPPLEMENTARY INFORMATION: On July 28, 1978, a notice of proposed withdrawal and reservation of land for the Department of the Army, Sacramento District Corps of Engineers, was published in the *Federal Register* at 43 FR 32881. The purpose of the application was for the preservation and perpetuation of a unique species of harvestmen (a phalangid of the arachnid class) residing in and old mine on the land. This notice is published in accordance with the regulations at 43 CFR 2310.2-1(d) which require that a notice specifying the date and time of termination to be published in the *Federal Register* by the authorized officer.

1. The segregative effect was terminated as to the following described land:

Mount Diablo Meridian

T. 3 N., R. 14 E.,

Sec. 35, SE1/4NE1/4SE1/4 and N1/2NE1/4SE1/4SE1/4.

The area described contains 15 acres in Tuolumne County.

2. On July 27, 1980, the lands described in paragraph 1 were opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

3. On July 27, 1980, the lands were opened to location and entry under the United States mining laws.

Date: August 10, 1988.

Nancy J. Alex,
Chief, Lands Section, Branch of Adjudication
and Records.

[FR Doc. 88-81674 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Record of Decision for Implementing a Master Plan for Management of the Great Swamp National Wildlife Refuge; Basking Ridge, NJ

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice.

SUMMARY: This notice makes available to the public the Record of Decision (ROD) on the Great Swamp National Wildlife Refuge (NWR) Master Plan. The ROD was prepared in accordance with Council on Environmental Quality Regulations, 40 CFR 1505.2. The decision of the Fish and Wildlife Service is based on information contained in: The Final Environmental Impact Statement (FEIS) which was filed with the Environmental Protection Agency in May, 1987 and became available to the public on May 20, 1987; other pertinent scientific and technical data; and public comments received on the proposal. The ROD selects the Proposed Action as the best alternative for a master plan to manage the Refuge for the next 10 to 20 years.

FOR FURTHER INFORMATION CONTACT:
Mr. Curtis Laffin, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158, (617) 965-5100 ext. 222.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (FWS) manages national wildlife refuges to meet the major purpose(s) for which they were established. The public is provided opportunities to enjoy natural resources found on refuges. These uses must be compatible with the purposes for which each refuge is established. Refuges are periodically analyzed to establish long-range objectives and strategies for accomplishing those objectives. Great Swamp NWR has been planned through such a process. This refuge was established in 1960 through the efforts of concerned citizens who raised funds to acquire and protect 3000 acres of important New Jersey wetland-upland habitat for migratory birds, other indigenous wildlife and their habitats. Acquisition has primarily been for migratory waterfowl and wildlife oriented recreation purposes. In addition Congress established a 3660 acre wilderness area at Great Swamp NWR in 1968. The Proposed Action Alternative selected in this ROD takes into account the significant amount of land development that has occurred in the Great Swamp watershed in recent years. Development has greatly altered the watershed and so disrupted surface water runoff that the Refuge habitats

have been adversely affected by wetter wet periods and dryer dry periods. Increased development has also brought more people closer to the Refuge, thereby greatly increasing demand for public use activities on the Refuge.

The Proposed Action Alternative addresses these and other pressures on Refuge habitats and wildlife and establishes management strategies to cope with them.

Alternatives Considered

The following four alternative master plans were considered in reaching a decision:

No Action Alternative

Provides for toxic waste clean-up on currently owned Refuge lands; precludes acquisition of other land containing toxic dump sites, and continues current management practices, outputs, and public use activities. Habitat and wildlife population protection, the annual deer hunt, water management in the Refuge's five impoundments, management of upland field and forest habitat, maintenance of climax forest, wildlife surveys, and bird banding would continue at current levels. Existing facilities, including parking lots, restrooms, boardwalk trails, an observation tower and an observation blind will be maintained. Pleasant Plains Road will be maintained as a gravel road open to through traffic. Public use activities such as birding and other wildlife observation, interpretation, wildlife education and fruit picking will continue at present levels. Great Swamp's present permanent staff of nine will continue to operate from the existing headquarters/maintenance complex.

Proposed Action Alternative

Major changes from current conditions include: Acquisition of land outside the presently approved acquisition boundary to prevent further encroachment and development of wetlands and critical upland edge habitats having high wildlife value and to prevent encroachment on and degradation of existing Refuge land.

Updating of a 1982-1984 hydrology study to determine the combination of water control modifications required to properly regulate water levels in Pools 1 and 2 and Middle Brook Pool.

Reversion of up to 1,000 acres of red maple dominated habitat to more diverse, earlier successional habitat types that will be more productive of wildlife, especially woodcock.

Regulation of public use in the Wilderness Area to assure it is managed to maintain its wilderness qualities.

Establishment of a trapping program to be instituted as needed to reduce excessive raccoon predation on nesting birds and other wildlife. Increased production of black duck, American woodcock, wood duck, red-shouldered hawk, bluebird and other sensitive species to meet Refuge wildlife production objectives.

Upgrading and expanding the public use program through the construction of a wildlife interpretive center, improvement of the existing trail system, construction of a self-guided interpretive trail, and construction of two visitor information kiosks and one wildlife observation blind. Taking action to minimize the negative effects of development within the watershed that threaten the ecological balance of the swamp through increased runoff, sedimentation and water pollution.

Public Use Alternative

This alternative expands options of public access, and for wildlife education and interpretation, while maintaining wildlife habitat diversity through moderate management activities. Unique features include canoeing, fishing, horseback riding trails, additional visitor contact points and 79 additional parking spaces. Land acquisition would include floodplains of some streams which flow into the Refuge. Self-guided trails and the connection of the Refuge trail system to adjacent county environmental centers will favor relations between the Refuge and local communities.

Wildlife Management Alternative

This alternative closes Pleasant Plains Road to through traffic and intensifies most wildlife management activities, especially for woodcock and waterfowl. Raccoon control will be implemented. Major management changes include acquisition of land prone to flooding and intensified woodcock habitat management to back succession stages of upland habitat.

Basis for the Decision

The Proposed Action alternative meets refuge purposes in a comprehensive manner and minimizes the environmental, social and economic impacts as much as is practicable. An exhaustive public participation process identified concerns of interested parties and brought about plan modifications that substantially resolved controversial issues related to items such as road abandonment and closures, trapping, animal control, hunting, controlled burning, woodcock management and public use facilities. Continued public participation during project

implementation will further reduce real or perceived impacts on social and natural resources. Measures to minimize impacts of the selected alternative are identified in this document and the FEIS.

The Proposed Action most effectively balances habitat protection, wildlife population management and public use opportunities to maximize the potential for Refuge benefits. Land acquisition will be expanded to acquire, from willing sellers, tracts of good wildlife habitat that have not been degraded by development. Acquisition of additional wetland and upland adjacent to wetland will also reduce the amount of private land that currently floods due to accelerated surface water runoff brought on by watershed development. In response to alteration of surface water runoff patterns, the Proposed Action includes updating the 1982-1984 hydrology study that accesses the effects of altered flows on Refuge water regimes.

This alternative includes action to control public use in the wilderness area while monitoring changes more closely to ensure that action can be taken to curb threats to the area's wilderness qualities.

The proposal to control the excessive raccoon population through trapping was opposed by many individuals and groups in their responses to the Draft EIS. However, no feasible alternative to reducing raccoon predation on nesting birds and other wildlife was presented. The adverse impact on wildlife production caused by raccoons is unacceptable so the trapping program will be developed. A similar situation exists with the annual deer hunt. If not controlled, the deer population will rapidly expand causing starvation, disease and damage to wildlife habitat and to other species. Browsing on neighboring crops and ornamental plants would increase as would the numbers of road-killed deer. The hunt will continue because there is no feasible alternative to maintain the herd at numbers compatible with available habitat.

Consistent with implementation of wildlife management actions, this alternative improves the quality of public use programs while minimizing conflicts with wildlife. The other alternatives do not provide an acceptable balance between wildlife and public use management.

The selected alternative responds to the concern that more communication is needed between the Refuge and its "neighbors." A FWS person has been assigned to work closely with the

Refuge to expand communication with surrounding communities.

The FWS considers the Proposed Action as the Preferred Alternative since it will best achieve the effective management of the Great Swamp NWR.

Terms and Conditions for Implementing Decision

The FWS will implement the Proposed Action alternative by phasing in specific actions through annual budget development as funding allows. Implementation of highly controversial actions such as trapping and controlled burning will be preceded by appropriate public review.

Conclusions

Based on a careful review and consideration of National Wildlife Refuge System Laws and Policies, the EIS and public comments, and other relevant factors, I am selecting the Proposed Action as the best alternative for the long-term management of the Great Swamp NWR.

Dale T. Coggeshall,
Acting Regional Director.

[FR Doc. 88-18673 Filed 8-17-88; 8:45 am]
BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5440, Block 342, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on August 10, 1988. Comments must be received within 15 days of the publication date of this notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m.

to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 12, 1988.

J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-18678 Filed 8-17-88; 8:45 am]
BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 274 (Sub-No. 3F)]

Abandonment of Rail Line; Use of Opportunity Costs

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: The Commission finds that, in abandonment proceedings decided after the notice becomes effective, the

appropriate rate of return to be used in calculating a railroad's opportunity cost or other return on investment, where use of the real pre-tax cost of capital is prescribed as the rate of return, is 12.6 percent. Other rates of return that are supported by clearly explained methodologies and evidence will be considered on a case-by-case basis.

DATE: This notice will be effective on August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

(TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: August 11, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Vice Chairman Andre dissented with a separate expression.

Noreta R. McGee,
Secretary.

[FR Doc. 88-18718 Filed 8-17-88; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Stipulation Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; American Creosote Works of Florida, Inc.

Pursuant to 42 U.S.C. 9622 (i), notice is hereby given that on August 4, 1988, a proposed Stipulation in *In re American Creosote Works of Florida, Inc.*, Case No. 82-04090, was lodged with the United States Bankruptcy Court for the Northern District of Florida, Pensacola Division. The proposed Stipulation concerns distribution of proceeds from the sale or lease of certain land owned by American Creosote Works of Florida, Inc. (American Creosote). Under the proposed Stipulation, Savings Life Insurance Company (a creditor of American Creosote) and the United States will share equally in any proceeds from the sale or lease of the land owned by American Creosote which is subject to the response and remedial action of the United States

Environmental Protection Agency at American Creosote's wood-treating facility located near Pensacola, Florida.

The Department of Justice will receive comments relating to the proposed Stipulation for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re American Creosote Works of Florida, Inc.*, D.J. No. 90-7-1-236.

The proposed Stipulation may be examined at the office of the United States Attorney for the Northern District of Florida, 100 N. Palafox Street, Room 307, Pensacola, Florida 32501 (Attn: Ben Beard, Assistant United States Attorney) and at the Region IV, Office of the United States Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30385. The proposed Stipulation may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Stipulation may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-18679 Filed 8-17-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of A Final Judgment by Consent Pursuant to the Clean Air Act; Pittsburgh Metal Lithographing Co., Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 9, 1988 a proposed Consent Decree in *United States v. Pittsburgh Metal Lithographing Company, Inc.*, Civil Action No. 87-8522, was lodged with the United States District Court for the Eastern District of Pennsylvania.

The Complaint filed by the United States alleged that Pittsburgh Metal Lithographing Company, Inc. ("PML") operated three metal surface coating lines in Fallsington, Pennsylvania, in violation of the standards for emission of volatile organic compounds (VOC)

contained in the Pennsylvania State Implementation Plan, 25 Pa. Admin. Code §§ 129.52 and 129.66, promulgated pursuant to the Clean Air Act, 42 U.S.C. 7413. The Complaint sought civil penalties of up to \$25,000 per day of violation. Pittsburgh Metal Lithographing Company, Inc. has executed the Consent Decree and agreed to pay a penalty of \$15,000.00 to the United States to resolve past violations of the SIP and the Act, stipulated penalties for any future violations of the SIP and for violations of the various deadlines and recordkeeping and reporting requirements of the consent decree, and to implement specific emission control measures which will bring the company's metal surface coating processes into compliance with the SIP requirements by August 10, 1988. PML has also agreed to shut down and discontinue operating Line 1, 2, 3, or 4 upon demand by EPA if EPA finds that PML is operating or has operated the line in violation of the terms of the decree. PML is currently undergoing reorganization under chapter 11 of the United States bankruptcy code in *In re: Pittsburgh Metal Lithographing Company, Inc.*, Bankruptcy no. 86-02978, United States District Court, Western District of Pennsylvania.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States v. Pittsburgh Metal Lithographing Co., Inc.*, Civil Action No. 87-8522, DOJ Ref. No. 90-5-2-1-1179. The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 3100 U.S. Courthouse, 601 Market Street, Independence Mall West, Philadelphia, Pennsylvania 19106. Copies of the Consent Decree may also be examined and obtained in person at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Tenth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC, 20044. When requesting a copy, please

present or enclose a check in the amount of \$4.00 (ten cents per page reproduction costs) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-18690 Filed 8-17-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Louis Serafini et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 3, 1988 a proposed Consent Decree in *United States v. Louis Serafini, et al.* was lodged with the United States District Court for the Middle District of Pennsylvania. The proposed Consent Decree concerns the grant of access to the Taylor Borough Superfund site, located near Scranton, Pennsylvania, by defendants who own land that adjoins the site. The proposed Decree also contains these defendants' agreement not to disturb or otherwise interfere with the remedy at the site and with the operation and maintenance activities to be undertaken there.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Louis Serafini, et al.*, D.J. Ref. 90-11-3-43.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Federal Building, Washington and Linden Streets, Scranton, Pennsylvania, at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Rm. 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$2.00 for reproduction costs,

payable to the "Treasurer of the United States."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-18681 Filed 8-17-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; The Tanner Companies

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. The Tanner Companies*, was lodged with the United States District Court for the District of Arizona. That action was brought pursuant to the Clean Air Act for violations of the new source performance standards ("NSPS") for hot mix asphalt facilities in Arizona.

The Consent Decree requires Tanner to comply with the NSPS for the plant that it currently owns that was in violation of the NSPS, including proper operation and maintenance of the plant. Stipulated penalties apply if violations of the NSPS occur. Tanner has sold the other two plants that were the subject of this action. Tanner must also submit results of all tests performed on the plant to the Environmental Protection Agency. In addition, Tanner will pay a civil penalty of \$82,842 to the United States.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States v. The Tanner Companies*, D.J. Ref. 90-5-2-1-944.

The proposed Consent Decree may be examined at the office of the United States Attorney, 4000 U.S. Courthouse, 230 North First Avenue, Phoenix, Arizona 85025 and at the Region IX office of the U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1527, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the proposed Consent

Decree should be accompanied by a check in the amount of \$1.00 for copying costs (\$0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-18682 Filed 8-17-88; 8:45 am]

BILLING CODE 4410-01-M

Stipulation of Settlement Pursuant to the Clean Water Act; United States Steel Corp., Geneva Works

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Stipulation of Settlement in *United States v. United States Steel Corporation, Geneva Works*, Civil Action No. 86-C-101W, was lodged with the United States District Court for the District of Utah, on August 9, 1988. The amended complaint in this action alleged that the defendant violated certain terms and conditions of a National Pollutant Discharge Elimination System permit issued to it pursuant to section 402 of the Clean Water Act, 33 U.S.C. 1342. By the Stipulation of Settlement, the defendant agrees to pay the amount of \$70,000 in settlement of this matter.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments related to the Stipulation of Settlement. Comments should be addressed to the Assistant Attorney General, Washington, DC 20530 and should refer to *United States v. United States Steel Corporation, Geneva Works*, D.J. Ref. No. 90-5-1-1-2548.

The Stipulation of Settlement may be examined at the Office of the United States Attorney, District of Utah, U.S. Courthouse, Room 476, 350 S. Main, Salt Lake City, Utah, 84101; at the Region VIII office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202; and the Environmental Enforcement Section, Land and Natural Resources Division, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530.

A copy of the Stipulation of Settlement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-18683 Filed 8-17-88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel; Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Challenge II Section) to the National Council on the Arts which was to have been held on August 17, 1988, from 9:00 a.m.-5:30 p.m., and on August 18, 1988, from 9:00 a.m.-4:30 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, has been changed. It will be held on August 31, 1988, from 9:00 a.m.-5:30 p.m. and on September 1, 1988, from 9:00 a.m.-4:30 p.m.

A portion of the meeting will be open to the public on September 1, 1988, from 3:30-4:30 p.m., for a policy discussion.

The remaining sessions of this meeting on August 31, 1988, from 9:00 a.m.-5:30 p.m., and September 1, 1988, from 9:00 a.m.-3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9) (b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Martha Y. Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-18684 Filed 8-17-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice: Applications and Amendment To Operating Licenses Involving No Significant Hazards Consideration; Correction

On May 3, 1988, the Federal Register published a Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing. A correction needs to be made to that notice:

On page 15755, in the first column, add "Docket No. 50-237" to the docket number already listed under the title "Nuclear Regulatory Commission." Also on page 15755, in the first column, and in the first paragraph under the title "Nuclear Regulatory Commission," add "Provisional Operating License No. 19" as being considered for issuance of an amendment and add "Unit 2" as the other applicable Dresden Nuclear Power Station unit for which operation is affected by the amendment.

On page 15755, second column, the date the licensee may file request for hearing was "June 2, 1988," it should now read "September 10, 1988."

Dated at Rockville, Maryland, this 10th day of August 1988.

For The Nuclear Regulatory Commission.
William Forney,

*Acting Director, Project Directorate III-2,
Division of Reactor Projects, III, IV, V, and
Special Projects.*

[FR Doc. 88-18744 Filed 8-17-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 6 to Facility Operating License No. NPF-62 issued to the Illinois Power Company¹ (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the licensees), for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

This amendment consists of a change to Technical Specification Section 4.11.2.7.2 concerning radioactivity rate of noble gases from the off-gas recombiner effluent. Specification 4.0.4

states that entry into an OPERATIONAL CONDITION or other specified applicable condition shall not be made unless the Surveillance Requirement(s) associated with the Limiting Condition for Operation have been performed within the applicable surveillance interval or as otherwise specified. Specification 4.11.2.7.2 requires the radioactivity rate of noble gases from the off-gas recombiner effluent to be determined at two specified frequencies: (1) At least once per 31 days, and (2) within 4 hours following an increase of 50% in the indicated nominal steady state fission gas release from the primary coolant (with certain provisions). The APPLICABILITY of this Specification (i.e., the applicable OPERATIONAL CONDITION) is "during operation of the main condenser air ejector."

Although it is readily apparent that Surveillance 4.11.2.7.2 cannot be performed until after entering the special applicable OPERATIONAL CONDITION, an exemption to Specification 4.0.4 has been approved for this surveillance in order to ensure compatibility between Specifications 4.0.4 and 4.11.2.7.2. The exemption formally allows the plant to enter the applicable OPERATIONAL CONDITION without having first performed the required surveillance.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on February 16, 1988 (53 FR 4478). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to this action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated May 1982.

For further details with respect to the action see (1) the application for amendment dated October 30, 1987, (2) Amendment No. 6 to License No. NPF-

62, and (3) Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC; and at Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 8th day of August 1988.

For The Nuclear Regulatory Commission.

Leonard N. Olshan,

*Acting Director, Project Directorate III-2,
Division of Reactor Projects—III, IV, V and
Special Projects.*

[FR Doc. 88-18745 Filed 8-17-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 7 to Facility Operating License No. NPF-62 issued to the Illinois Power Company¹ (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the licensees), for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

This amendment consists of three changes to Technical Specification Sections 3.6.1.8, 3.6.2.7, 4.6.1.8.2, and 4.6.2.7.4, Table 3.6.4-1, and Bases 3/4.6.2.7 and 3/4.6.1.8 concerning the containment building and drywell vent and purge systems. The first change consists of those changes required to delete the OPERABILITY and surveillance requirements associated with 50° stops installed for the VR/VQ system containment isolation valves on the basis that the 50° stops will now be considered to be a part of the permanent design for these valves. The second change inserts footnotes into the Limiting Conditions for Operation and applicable surveillance requirements associated with Specifications 3.6.1.8 and 3.6.2.7 to exclude the time when valves are opened for performing stroke-time testing from the cumulative system

¹ Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

¹ Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

operation time limited by the Limiting Conditions for Operation. The third change extends the application of Note "(a)" in Table 3.6.4-1 of the Technical Specifications to include specific VR/VQ containment isolation valves which need to be opened while conducting certain local leak rate tests.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on February 18, 1988 (53 FR 4919). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the Environmental Assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated October 30, 1987, (2) Amendment No. 7 to License No. NPF-62, and (3) Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC; and at Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 9th day of August 1988.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Acting Director, Project Directorate III-2,
Division of Reactor Projects—III, IV, V and
Special Projects.

[FR Doc. 88-18746 Filed 8-17-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL-3 (Reception Centers)]

Long Island Lighting Co., Shoreham Nuclear Power Station, Unit 1; Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for the captioned phase of this operating license proceeding. As reconstituted for the phase of this proceeding (OL-3) dealing with the issue of reception centers, the Appeal Board will consist of the following members;

Thomas S. Moore, Chairman
Alan S. Rosenthal
Howard A. Wilber

Dated: August 12, 1988.

C. Jean Shoemaker,
Secretary to the Appeal Board.

[FR Doc. 88-18774 Filed 8-17-88; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A88-5; Order No. 795]

Postoffice Closings; Forksville, VA

Forksville, VA 23940, Abner L. Simmons, Petitioner; Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. Sec. 404(b)(5). Issued August 11, 1988.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W. H. "Trey" LeBlanc III.

Docket Number: A88-5.

Name of Affected Post Office:

Forksville, Virginia 23940.

Name(s) of Petitioner(s): Abner L. Simmons.

Type of Determination: Closing.

Date of Filing of Appeal Papers:

August 9, 1988.

Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to

dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders:

(A) The record in this appeal shall be filed on or before August 24, 1988.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the *Federal Register*.

Charles L. Clapp,
Secretary.

Appendix

Forksville, Virginia 23940

[Docket No. A88-5]

August 9, 1988—Filing of Petition

August 11, 1988—Notice and Order of Filing of Appeal

September 6, 1988—Last day for filing petitions to intervene (see 39 CFR 3001.111(b)).

September 13, 1988—Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115(a) and (b)).

October 3, 1988—Postal Service Answering Brief (see 39 CFR 3001.115(c)).

October 18, 1988—Petitioner's Reply Brief should Petitioner choose to file one (see 39 CFR 3001.115(d)).

October 25, 1988—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).

December 7, 1988—Expiration of 120-day decisional schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc. 88-18697 Filed 8-17-88; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24694]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 12, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 6, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company (70-7530)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and its electric utility subsidiaries, Alabama Power Company ("APC"), 600 North 18th Street, Birmingham, Alabama 35291, and Georgia Power Company ("GPC"), 333 Piedmont Avenue NE., Atlanta, Georgia 30308, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45 and 86-95 thereunder.

Southern proposes to organize a new wholly owned Delaware subsidiary to be known as Southern Nuclear Operating Company, Inc., ("SONOPCO"), to consolidate the personnel of the Southern system companies involved in nuclear services into a single organization. SONOPCO's operating structure will be implemented in three phases. Initially, key nuclear operations management personnel will be shared between APC and GPC. In the second phase, which would begin upon approval by the Commission of the present application-declaration, SONOPCO will be organized as a service company that will provide APC and GPC with nuclear services, including plant operating services, fuel procurement services, administrative services and technical services, but will not own, finance or operate any nuclear or other utility assets. In the third phase, SONOPCO will become responsible, on behalf of the owners and through contract with them, for the operation and maintenance of all nuclear generating facilities owned by Southern electric system companies.

SONOPCO may apply to the Nuclear Regulatory Commission ("NRC") or its successor for facility license or permits

for the Farley Nuclear Plant ("Farley"), owned and operated by APC, and for the Hatch Nuclear Plant ("Hatch") and Vogtle Nuclear Plant ("Vogtle"), each of which is jointly owned by GPC, the Municipal Electric Authority of Georgia, Oglethorpe Power Corporation, and the City of Dalton, Georgia, and for which GPC is the present licensee and operator under an existing operating agreement. Nuclear services rendered by SONOPCO to nuclear plants not wholly owned by associates of the Southern system will be pursuant to service or operating agreements that provide for billing at negotiated rates.

Accounting, treasury, and other support services, as well as personnel, may be furnished to SONOPCO at cost by Southern Company Services, Inc., APC, and GPC. SONOPCO will render service to associated companies at cost, pursuant to section 13(b) of the Act. The costs will be accounted for and billed to the owners of the subject facilities as prescribed by Rules 91 and 93 and the uniform system of accounts prescribed thereunder. In the case of SONOPCO's services rendered for the Vogtle and Hatch units, these costs will be determined, accumulated, and allocated among the owners of Vogtle and Hatch in proportion to their ownership interests.

SONOPCO will issue, and Southern will purchase for cash, all of the shares of SONOPCO's common stock for an aggregate consideration of up to \$10 million. Southern proposes to make open account advances to SONOPCO from time to time, which may be converted into capital contributions or shares of common stock of SONOPCO. The rate of return on SONOPCO's equity capital will not exceed the average of the most recent rates of return allowed by the Alabama Public Service Commission and the Georgia Public Service Commission on the equity capital of APC and GPC, respectively. SONOPCO also proposes to obtain funds from third party lenders. The aggregate principal amount of advances to SONOPCO by Southern or lenders other than Southern will not exceed \$50 million at any time outstanding. Interest on open account advances by Southern will accrue at a rate not to exceed the prime rate at a bank designated by Southern. Unless authorized by the Commission, loans by parties other than Southern will have maturities not to exceed ten years and will accrue interest at a rate not to exceed the lender's prime rate plus 2% for variable rate loans and the prime rate at the time of borrowing plus 3% for fixed rate loans. Loans by parties other than Southern may be secured or

unsecured and may be guaranteed by Southern, APC and/or GPC. With respect to the initial capitalization of \$10 million and to open account advances from Southern, it is requested that the Commission reserve jurisdiction over amounts in excess of \$5,000,000 and \$15,000,000 respectively, and over all advances from lenders other than Southern. Southern requests this financing authority through December 31, 1990.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-18712 Filed 8-17-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-069]

National Boating Safety Advisory Council; Applications for Appointment

AGENCY: Coast Guard, DOT.

ACTION: Request for applicants.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the National Boating Safety Advisory Council (NBSAC). The Council is a 21 member Federal advisory committee that advises the Coast Guard on matters related to recreational boating safety. Members for the Council are drawn equally from the following sectors of the boating community: State officials responsible for State boating safety programs; recreational boat and associated equipment manufacturers; and boating organizations and the general public. Members are appointed by the Secretary of Transportation. Applicants are considered for membership on the basis of their expertise, knowledge, and experience in boating safety. The terms of appointment are staggered so that seven vacancies occur each year.

Applications are being sought for membership vacancies that will occur as follows: Two (2) members from the recreational boat and associated equipment manufacturers; two (2) members from national recreational boating organizations and from the general public; and three (3) members from State officials responsible for State boating safety programs. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities

and women. The Council normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

DATE: Requests for application forms should be received no later than September 30, 1988.

ADDRESS: Requests for application forms should be sent to Commandant (G-NAB/43), U.S. Coast Guard Headquarters, Washington, DC 20593-0001; telephone: (202) 267-0997.

FOR FURTHER INFORMATION CONTACT: Captain W.S. Griswold, Executive Director, National Boating Safety Advisory Council (G-NAB), Room 4302, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001; (202) 267-1077.

Dated: August 11, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-18777 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-14-M

[CGD 88-061]

Rules of the Road Advisory Council; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given of a meeting of the Rules of the Road Advisory Council (RORAC). A meeting of the Rules of the Road Advisory Council will be held Tuesday thru Thursday, October 18-20, 1988. The meeting will be held at the Holiday Inn/Crowne Plaza Hotel, 250 N. Main Street, Memphis, Tennessee, and is scheduled to begin 8:30 a.m. and end at 4:30 p.m. each day. The agenda for the meeting includes the following items.

1. Working Group meetings on Tuesday, October 18th, to discuss issues dealing with Lights and Shapes, COLREGS, Pilot Rules, use of a light to identify Coast Guard Auxiliary vessels operating under Coast Guard orders, and RORAC Publicity.

2. On Wednesday, October 19th, the major issue being considered by the Council will be the Vertical Sector Lighting Requirements for Unmanned Barges operating on COLREG waters.

3. Matters related to the International Regulations for Preventing Collisions at

Sea, 1972 (72 COLREGS) recently considered by the International Maritime Organization's (IMO) Assembly of November 1987.

(a) Review of proposed COLREGS amendments and their applicability to the Inland Navigation Rules.

(b) Matters to be considered at IMO's 35th session of the Subcommittee on Safety of Navigation (SUBNAV) in February 1989.

4. Brief update on Coast Guard Status Reports and Information Items.

5. Proposals by U.S. Navy to amend the Navigation Rules and Annexes by providing the Council with the results of recent restricted in ability to maneuver light tests.

6. Any matters properly brought before the Council.

The Council is interested in hearing the advice for individual attendees and interested parties concerning the Vertical Sector Lighting Requirements for Unmanned Barges. Persons interested in addressing the Council on this issue, particularly persons with expertise and experience with the navigational lighting systems used on unmanned barges, battery power sources, barge lighting appliances, towing vessel operations, pilotage, and operation of commercial and recreational vessels, should contact the Executive Secretary prior to September 30, 1988. The technology available to meet the vertical sector light requirements of Annex I to the Navigation Rules and problems associated with meeting the requirements will be considered by the Council.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Secretary no later than the day before the meeting. Any members of the public may present a written statement to the Council at any time.

Additional information may be obtained from Mr. Peter Palmer, Executive Secretary, Rules of the Road Advisory Council, U.S. Coast Guard (G-NSR-3), Washington, DC 20593-0001, Telephone (202) 267-0362.

Dated: August 11, 1988.

R. T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 88-18778 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL AVIATION ADMINISTRATION

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Santa Barbara Municipal Airport, Santa Barbara, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Santa Barbara, California for the Santa Barbara Municipal Airport under the provisions of the Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is August 17, 1988. The public comment period ended July 18, 1987.

FOR FURTHER INFORMATION CONTACT: Herbert W. Hyatt, Environmental Protection Specialist, AWP-611.2, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 297-1534.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Santa Barbara Municipal Airport, Santa Barbara, California are in compliance with applicable requirements of Part 150, effective August 17, 1988. "The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Santa Barbara Municipal Airport under Part 150, in conjunction with the noise exposure map, and that this program will be approved or disapproved on, or before February 13, 1987." This notice also announces the availability of this program for public review and comment.

Under section 103 of Title 1 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA, noise exposure maps, which meet applicable regulations which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed

in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title 1 of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the reduction of existing noncompatible uses, and for the prevention of the introduction of additional noncompatible uses.

The city of Santa Barbara submitted to the FAA on December 15, 1986, noise exposure maps, descriptions and other documentation which were produced during Santa Barbara Municipal Airport, FAR Part 150 Noise Compatibility Study, executed Project No. 3-06-0235-02 on February 12, 1985. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Santa Barbara. The specific maps under consideration are DWG. SBA-3, DWG. SB-5, SWG. SBA-10, in the submission. The FAA has determined that these maps for Santa Barbara Municipal Airport are in compliance with applicable requirements. This determination is effective August 17, 1988. FAA's determination on the airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program, or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act.

These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Santa Barbara Municipal Airport, also effective on August 17, 1988. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 13, 1989.

The FAA's detailed evaluation will be conducted. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested person are invited to comment on the proposed program with specific references to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Ave., SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 S. Aviation Blvd., Room 6E25, Hawthorne, California 90261

Ms. Karen Ramsdell, Deputy Airport Director, Santa Barbara Municipal Airport, 610 Firestone Road, Goleta, California 93117

"Questions may be directed to the individual named above under the

heading, FOR FURTHER INFORMATION CONTACT."

Issued in Hawthorne, California, on August 11, 1988.

Herman C. Bliss,

Manager, Airports Division, FAA, Western-Pacific Region.

[FR Doc. 88-18742 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Huntington & Wabash Counties, IN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed reconstruction and realignment of US 24 between SR 13 and SR 37, which may include a major bridge structure across the Wabash River, in Huntington and Wabash Counties.

FOR FURTHER INFORMATION CONTACT:

Mr. James E. Threlkeld, District Engineer, Federal Highway Administration, Federal Office Building, 575 North Pennsylvania Street, Room 254, Indianapolis, Indiana, 46204, Telephone 317/269-7479.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Highways, will prepare an environmental impact statement (EIS) on the proposed reconstruction and realignment of US 24 between SR 13 and SR 37 for a distance of approximately 15 miles. The proposed typical highway section will be 2-24' pavements with a 60' median within a minimum 300' right-of-way. The facility will be built with a partial access control.

The following alternatives are being considered: (1) Do Nothing; (2) Alternate #1 with slight variations this alignment follows the existing US 24 route; (3) Alternate #2 is an alignment north of and including sections of existing US 24; (4) Alternate #3 an alternate containing roadway sections north and south of the Wabash River which includes a new major bridge structure across the Wabash River; (5) Alternate #4 an alignment basically south of the Wabash River. This alignment also includes a new bridge structure across the Wabash River.

Improvement to this section of US 24 is considered necessary to efficiently accommodate the traffic demand for existing and projected levels along this corridor.

The project will be coordinated with various federal, state and local agencies to obtain and incorporate their input into the draft environmental impact statement.

No formal scoping meeting is currently planned for this project. An opportunity for a public hearing will be advertised. Public notice will be given of the time and place of the public hearing. The approved draft environmental impact statement will be available for public and agency review and comment.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Agencies, organizations and individuals interested in submitting comments and/or questions should direct them to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

James E. Threlkeld,

District Engineer.

[FR Doc. 88-18687 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Lackawanna County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Lackawanna County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Philibert A. Ouellet, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108-1086, Telephone: (717) 782-3461, or Charles M. Mattei, P.E., District Engineer, Pennsylvania Department of Transportation, P.O. Box 111, Scranton, PA 18501, Telephone: (717) 963-4010.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement (EIS) on a proposal to provide a new transportation facility on the easterly side of the Lackawanna Valley in order to promote the residential, commercial and industrial development of this area

and relieve traffic congestion on local roadway network. This proposed action has been designated as S.R. 3027, Section AOO, Lackawanna Valley Industrial Highway. The proposed highway will traverse the easterly side of the Lackawanna River Valley with its southern terminus being Interstate 81 and the northern terminus, U.S. Route 6 in Carbondale Township. The proposed highway will be approximately 16 miles in length.

The proposed project has been under consideration for many years and a variety of alignments have been studied. A Draft Environmental Impact Statement was submitted to the Council on Environmental Quality on February 16, 1977. The project was then placed on hold, due to funding constraints. Since the original studies are over ten years old, a new Environmental Impact Statement and Technical Basis Reports will be prepared.

Four build alternatives and a no-build alternative will be considered in the proposed EIS.

All of the current alternatives will begin at one of the following interstate interchanges:

1. I81—Exit 56 Main Avenue
2. I81—Exit 55 Blakely Street
3. I380—Exit 1 Tighe Street
4. I81/380 Interchange

All the alternatives will terminate at T.R. 6 at White's Crossing in Carbondale Township.

The alternatives will be studied in detail in the area of preliminary engineering, land use, displacement and relocation of businesses and residences, community cohesion, economy, employment and population, farmland evaluation, visual resources, water quality and aquatic biota, flood plains and flood hazard, soils and erosion analysis, ground water and hydro geology, vegetation and wildlife, endangered species, wetlands, energy consumption, mineral resources, air quality, noise, municipal industrial and hazardous waste facilities, historic resources, archaeological resources, and construction impacts.

Letters describing the proposed action, the scope of the studies, and soliciting comments will be sent to the appropriate federal, state and local agencies, and to private organizations and citizens who express interest in the proposal. Public meetings will be held in the area. Public notices of the time and place of these meetings and any required public hearings will be provided. The draft EIS will be available for public and agency review and comment prior to the public hearing.

Public involvement and inter-agency coordination will be maintained throughout the development of the EIS.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments, suggestions and questions concerning this proposed action and the EIS should be directed to FHWA or PennDOT at the address above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372, regarding intergovernmental consultation on Federal programs and activities apply to this Program.)

George L. Hannon,

Assistant Division Administrator, Federal Highway Administration.

[FR Doc. 88-18688 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; St. Lucie County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will not be prepared for a proposed highway project in St. Lucie County, Florida.

FOR FURTHER INFORMATION CONTACT:

R. V. Robertson, District Engineer, Federal Highway Administration, 227 North Bronogh Street, Room 2015, Tallahassee, Florida 32301, Telephone: (904) 681-7236.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an Environmental Impact Statement (EIS) for a proposed highway project to improve Port St. Lucie Boulevard in St. Lucie County, Florida, was issued on May 28, 1986 and published in the June 4, 1986 *Federal Register*. The FHWA, in cooperation with the Florida Department of Transportation, has since determined that preparation of an EIS is not necessary for this proposed highway project and hereby rescinds the previous Notice of Intent.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernment consultation of Federal programs and activities apply to this program.)

Issued on August 9, 1988.

R. V. Robertson,

District Engineer, Tallahassee, Florida.

[FR Doc. 88-18722 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. EX88-1; Notice 2]

General Motors Corp.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards Nos. 108 and 111

This notice grants the petition by General Motors Corporation of Warren, Michigan, for a temporary exemption from several requirements of Motor Vehicle Safety Standards Nos. 108 *Lamps, Reflective Devices, and Associated Equipment*, and 111 *Rearview Mirrors*. The basis of the petition was that requiring compliance would prevent it from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles (15 U.S.C. 1410(a)(1)(D), implemented by 49 CFR 555.5 and 555.6(d)).

Notice of receipt of the petition was published on April 12, 1988, and an opportunity afforded for comment. (53 FR 12093).

GM wishes to institute a factory delivery program for two of its passenger cars, similar to programs established by European manufacturers where Americans purchase vehicles in Europe meeting the Federal motor vehicle safety standards, drive them there on holiday, and then return to the U.S. with their vehicles. The purchasers of the vehicles for which exemptions are sought would be "European citizens who are either visiting or temporarily assigned to work in the U.S.," who would drive them in the U.S., and export them to their home countries. GM notes that these vehicles would have to be built to European safety specifications, and that this necessitates a noncompliance with two Federal motor vehicle safety standards which, absent an exemption, precludes sale and use of the cars in the United States.

The petitioner seeks a 2-year exemption to cover, as limited by 15 U.S.C. 1410, not more than 2500 vehicles each year. These vehicles are 1988-90 Cadillac Eldorado and Seville passenger cars. The vehicles would comply with all Federal motor vehicle safety standards with the exception of portions of the standards on lighting and rearview mirrors. Specifically, the

headlamps will meet European (ECE R20) photometrics rather than those of Standard No. 108, the side marker lamps and reflectors will be eliminated, and the turn signals and stop lamps will meet the photometrics of ECE R7 and R6 respectively. The outside driver's side rearview mirror will be convex, and the passenger side convex mirror will not have the words "Objects in mirror are closer than they appear" etched on them.

GM argued that the noncomplying vehicles will nevertheless have an equivalent overall level of safety. The vehicles will be equipped with lamps not required by Standard No. 108, such as rear fog lamps and "side repeater (turn signal) lamps," which "will serve to improve the conspicuity of the vehicle, and in the aggregate should compensate for the photometric variances." It noted that the center highmounted stop lamp will be supplied and wired for use while the vehicles are in the U.S. Vehicles intended for use in Norway and Sweden will be equipped with daytime running lamps, while those sold to residents of Finland and Sweden will have a fluidic headlamp cleaning system. With respect to headlamp photometrics, GM stated that safety evaluation of U.S. and European specifications tends to be subjective, that each has trade offs, and that a number of countries "including Sweden, Switzerland, Canada, Japan, and the Persian Gulf States permit headlamps with either European or U.S. beam patterns." It discussed beam pattern differences. On the upper beam, minimum values for test points at 9 and 12 degrees left and right of HV will not be met but since "the primary purpose of the high beam is to provide illumination 'down the road', we do not believe that providing illumination below the minimum value at these wide test points poses a safety concern." As for the lower beam, the lamp provides only 80% of the minimum value at test point 2 D 15 R, and 67% at 1 1/2 D 2R. But since the drivers of the cars "will be Europeans who are accustomed to the forward illumination characteristics of these vehicles" the noncompliant lighting "should provide 'equivalent safety' for these drivers compared to vehicles with headlights complying with FMVSS 108 photometrics."

As for the noncompliances with Standard No. 111, GM argued that right hand mirrors without legends are used throughout Europe. Further, many European vehicles also use convex mirrors on the driver's side. In sum, "since Europeans are more accustomed to convex mirrors than U.S. drivers, there is not safety value added by

providing flat mirrors on the driver's side or the passenger side etched explanation to the users of the subject vehicles."

In addition to the supplemental lighting equipment heretofore described, the vehicles will be equipped with safety equipment not required under U.S. standards. This includes "vehicle sensitive and webbing sensitive seatbelt retractors," ECE requirements for more rounded surfaces on the inside and exterior of the vehicle, ECE requirements for antiskid braking systems, and three point seat belts at rear outboard seating positions.

GM argued that an exemption will be in the public interest in "improving the severe trade deficit currently being suffered by the U.S.," albeit in a small way. Further, the potential exists "for this type of export activity to expand in the future to include additional car models, and perhaps make a more significant contribution to reducing the deficit, provided regulatory constraints do not preclude such activity."

Four comments were received on the petition, each supporting the granting of an exemption. In the opinion of Volvo Cars of North America, a grant would help to promote international trade and the harmonization of international regulations. Volvo believes that the exempted vehicles could constitute a test fleet to "facilitate a study of the safety effectiveness of these devices." It is especially anxious that the agency study side turn signal repeaters and convex drivers' side mirrors, which, respectively it argues, enhance the conspicuity of the vehicle and eliminate blind spots. Volkswagen of America also suggests corresponding amendments to the Federal safety standards, supporting convex mirrors and arguing that differences between European and U.S. photometrics are inconsequential with respect to motor vehicle safety. Mercedes-Benz of North America argues that the ECE regulations are "at least" equivalent in their overall level of safety, and that any "perceived" but technically unsubstantiated reduction in safety is offset by improvements to overall safety by added features included on ECE version lighting and mirror systems." Specifically, it submits that the tradeoffs involved result in equivalent road illumination; the ECE systems produce less glare whereas the U.S. systems may provide better illumination of overhead non-lit road signs. It cites the experience of Canada which allows both U.S. and ECE headlamp systems to no apparent safety detriment. The amber rear turn signal lamps which would be provided

and "by NHTSA's own studies * * * have been found to provide a 14 to 15% reduction of rear-end collisions" in comparison with red ones "should offset any potential losses in rear-end accident avoidance due to a missing center highmounted stop lamp." As for the mirrors, Mercedes-Benz submits that those required by the ECE have an added safety feature in that they "fold-away" rearward and forward. The Motor Vehicle Manufacturers Association urged the Administrator to "consider actions that would allow American manufacturers to take advantage of important opportunities to increase export sales". It pointed out that many European countries allow the purchase of vehicles meeting U.S. safety and emission standards, but not meeting local ones for "temporary use" in those countries before shipment to the United States.

The agency has carefully considered the petition and the views of the commenters. In its years in interpreting the National Traffic and Motor Vehicle Safety Act, the agency has been cognizant of its anomalies and inconsistencies. For example, the Act appears to forbid without exception the importation of vehicles that do not conform to all applicable Federal motor vehicle safety standards except under such terms and conditions as may be deemed necessary to ensure that they are brought into compliance with such standards. Yet the regulations governing the importation of vehicles (19 CFR 12.80) recognize the existence of international treaties to which the United States is a party that allow entry without the legal necessity to conform of vehicles owned by certain specified classes of foreigners. Further, the terms of the Act are such that these same classes of importers cannot purchase a new American-made car in the United States unless that car meets all Federal safety standards. A vehicle that does so may not conform with the standards of the purchaser's country, requiring its purchaser either to sell the car before returning to the home country, or to pay for modifications before the vehicle is acceptable there. In the 21 years since the Act became law, not only have many countries adopted vehicle safety standards, but an international movement has grown to harmonize those standards to the extent compatible with local safety concerns. Thus today some of the differences that exist in standards could be viewed as differences more in degree than in kind.

In the instant situation, the vehicles are intended for purchase and use by

persons whose countries require image-reducing mirrors and headlamps with different beam patterns. These drivers are already acclimated to the different motoring habits that use of these devices may entail, and their accident-avoidance potential should not be compromised. Nor do they appear to create safety problems for other motorists or pedestrians. Although the safety benefits of side marker lamps and reflectors will not be realized, there are other aspects of motor vehicle conspicuity not covered by Standard No. 108 which will be benefitted. Side turn signal lamps, daytime running lamps, headlamp cleaning systems, and red rear fog lamps have no mandatory U.S. counterparts but will be fitted on exempted vehicles. In addition, the vehicles will have other safety related devices not required by the Federal safety standards, such as rear seat upper torso restraints and antilock brake systems.

In the absence of a grant, the petitioner will be unable under the Act to sell its vehicles to their intended purchasers for temporary use in the United States. In consideration of the foregoing, it is hereby found that petitioner is otherwise unable to sell a motor vehicle whose overall level of safety equals or exceeds that of nonexempted motor vehicles, in the absence of a grant, and that an exemption would be in the public interest and consistent with the objectives of the Act. Accordingly, General Motors Corporation is hereby granted NHTSA Exemption 88-1. This exemption applies to no more than 2500 Cadillac Seville and Eldorado passenger cars manufactured between August 1, 1988 and August 1, 1989, and to no more than 2500 such vehicles manufactured between August 1, 1989, and August 1, 1990. Exemption 88-1 excuses such vehicles from compliance with the requirements of 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*, that they be equipped with front and rear side marker lamps and reflectors, and that their headlamps, stop lamps, and turn signal lamps meet the photometric requirements of the standard. It also excuses such vehicles from compliance with paragraphs S5.2.1 and S5.4.2 of 49 CFR 571.111 Motor Vehicle Safety Standard No. 111, *Rearview Mirrors*.

The agency wishes to note that while it is granting this petition it does not necessarily agree with each argument presented by the commenters. Thus this notice should not be interpreted as

agreement with comments that European and U.S. photometrics requirements are equivalent in terms of safety, that yellow turn signals are superior to red turn signals (contrary to the impression of Mercedes-Benz, that issue is still under review), etc. Rather, the agency's decision is based upon a finding that for the reasons given above *in toto*, the exempted vehicles provide, and will be used in a manner that provides, an equivalent overall level of safety.

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50)

Issued on August 12, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-18725 Filed 8-17-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular; Public Debt Series No. 21-88]

Treasury Notes; Series C-1998

Washington, August 11, 1988.

The Secretary announced on August 10, 1988, that the interest rate on the notes designated Series C-1998, described in Department Circular—Public Debt Series—No. 21-88 dated August 4, 1988, will be 9¼ percent. Interest on the notes will be payable at the rate of 9¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-18770 Filed 8-17-88; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular; Public Debt Series No. 20-88]

Treasury Notes; Series T-1991

Washington, August 10, 1988.

The Secretary announced on August 9, 1988, that the interest rate on the notes designated Series T-1991, described in Department Circular—Public Debt Series—No. 20-88 dated August 4, 1988, will be 8¾ percent. Interest on the notes will be payable at the rate of 8¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-18771 Filed 8-17-88; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION**Voluntary Service National Advisory Committee; Availability of Annual Report**

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the VAVS National Advisory Committee for 1987 has been issued.

The report summarizes activities of the Annual Meeting which was held in Clearwater, FL, October 23-25, 1987. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540 and

Veterans Administration, Voluntary Service (135), Room 601, 810 Vermont Avenue, NW., Washington, DC 20420

Dated: August 10, 1988.

By the direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-18689 Filed 8-17-88; 8:45 am]

BILLING CODE 8320-01-M

Administrator's Educational Assistance Advisory Committee; Meeting

The Veterans Administration gives notice that a meeting of the Administrator's Educational Assistance Advisory Committee, authorized by 38 U.S.C. 1792, will be held in the Director's Office Conference Room, on the fourth floor of the Veterans Administration Regional Office, Federal Building, 1520 Market St., St. Louis, Missouri 63103, Thursday, September 15, 1988. The session will begin at 8 a.m. The purpose of the meeting will be to review the Montgomery GI Bill central processing operations and the Optical Disk Prototype Project.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mrs. Mary F. Leyland, Executive Secretary, Administrator's Educational Assistance Advisory Committee (phone 202-233-2152) prior to September 8, 1988.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 3 p.m. on September 15, 1988.

Dated: August 9, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-18690 Filed 8-17-88; 8:45 am]

BILLING CODE 8320-01-M

Career Development Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101, will be held in the Lurline Room of the Fisherman's Wharf Holiday Inn, 1300 Columbus Avenue, San Francisco, California, October 5 through 7, 1988, starting at 8 a.m. October 5. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration. The committee advises the Director, Medical Research Service on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, and Senior Medical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 8 a.m. to 8:45 a.m. to October 5, 1988, to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Veterans Administration Central Office, Washington, DC 20420 (202-233-2317) prior to September 28, 1988. The meeting will be closed from 8:45 a.m. to 5 p.m. on October 5, 8 a.m. to 5 p.m. to October 6, 8 a.m. to 3 p.m. on October 7, for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of Pub. L. 92-463 as amended, in accordance with subsection (c) (6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from David D. Thomas, Chief, Career Development Program, Medical Research Service (151J), Veterans Administration, Washington, DC 20420 (phone 202-233-2317).

Dated: August 4, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-18691 Filed 8-17-88; 8:45 am]

BILLING CODE 8320-01-M

Geriatrics and Gerontology Advisory Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held in the Administrator's Conference Room on the 10th floor of the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC on September 9-10, 1988. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Administrator and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers established by the Department of Medicine and Surgery.

The meeting will convene at 8:30 a.m. on September 9 and adjourn at 4:30 p.m. On September 10, the meeting will convene at 8:30 a.m. and adjourn at 11:00 a.m. This will be a working session to discuss future evaluation and to develop strategies to assure that the field of geriatrics, both treatment and education, are placed in the mainstream of all VA medical activities.

The meeting is open to the public up to the seating capacity of the room. Because the capacity is limited, it will be necessary for those wishing to attend to contact Jacqueline Holmes, Program Assistant, Office of Assistant Chief Medical Director for Geriatrics and Extended Care, Veterans Administration Central Office (phone 202/233-3781) prior to September 2, 1988.

Dated: August 4, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-18692 Filed 8-17-88; 8:45 am]

BILLING CODE 8320-01-M

Veterans' Advisory Committee on Rehabilitation; Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room 1010 of the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC

20420, September 20, 21 and 22, 1988. The sessions will begin at 9 a.m. The committee will be discussing case management services in the Veterans Administration. The committee encourages members of the rehabilitation community and others to comment orally or in writing on the provision of case management services.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for

those wishing to attend to contact Mr. Jeffrey Goetz, Chief, Policy and Program Development, Vocational Rehabilitation and Counseling (phone 202-233-5449) prior to September 10, 1988.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Written statements should be sent to Mr. Ronald Drach, Chairman, Veterans' Advisory Committee on Rehabilitation, c/o

Disabled American Veterans, 807 Maine Avenue, SW., Washington, DC 20024. Oral statements will be heard at 2 p.m. on September 20, 1988 and at 9:30 a.m. on September 21, 1988.

Dated: August 11, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-18693 Filed 8-17-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 160

Thursday, August 18, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:30 a.m. October, 17, 1988.

PLACE: The Willard Intercontinental, 1401 Pennsylvania Ave., NW., Washington, DC 20004.

STATUS: Closed, pursuant to 5 U.S.C. 552 (b) (c) (1) 22 CFR 1302.4 (c) and (h) of the Board's rules (42 FR 9388, March 12, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON AND ADDITIONAL

INFORMATION: Bruce D. Porter, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036.

Mark G. Pomar,

Deputy Executive Director.

[FR Doc. 88-18820 Filed 8-16-88; 8:45 am]

BILLING CODE 6155-01-M

Corrections

Federal Register

Vol. 53, No. 160

Thursday, August 18, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; Department of Energy et al.

Correction

In notice document 88-18018 beginning on page 30084 in the issue of Wednesday, August 10, 1988, make the following correction:

On page 30084, in the third column, the first "Docket Number: 88-309" should read "Docket Number: 88-039".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 80736-8136]

Summer Flounder Fishery

Correction

In the issue of Friday, August 5, 1988, on page 29549 beginning in the first column, a correction to FR Doc. 88-16360 appeared. It was inaccurate and should have appeared as follows:

On page 27540, in the third column, in the file line at the end of the document, "Filed 7-20-88; 8:45 am" should read "Filed 7-18-88; 12:07 pm".

BILLING CODE 1505-01-D

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Hungarian People's Republic

Correction

In notice document 88-17904 appearing on page 29932 in the issue of August 9, 1988, make the following correction:

In the third column, in the table, under "Category", the first entry should read "433".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

Correction

In notice document 88-16465 beginning on page 27556 in the issue of Thursday, July 21, 1988, make the following correction:

On page 27559, in the third column, in paragraph B., in the introductory text, in the second line, "not" should read "now".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket No. R-0620]

Regulation CC; Availability of Funds and Collection of Checks

Correction

In rule document 88-11267 beginning on page 19372 in the issue of Friday, May 27, 1988, make the following correction:

PART 229—[CORRECTED]

Appendix A—[Corrected]

On page 19447, in the third column, in Appendix A, under Federal Reserve Offices, in the first column under that heading, after the fifth entry insert "0212 0400 5".

BILLING CODE 1505-01-D

FRIDAY

Thursday
August 18, 1988

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 256 and 281

Outer Continental Shelf Minerals and
Rights-of-Way Management, General;
Leasing of Minerals Other Than Oil, Gas,
and Sulphur in the Outer Continental
Shelf; Proposed Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 256 and 281

Outer Continental Shelf Minerals and Rights-of-Way Management, General; Leasing of Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule would apply to leasing minerals other than oil, gas, and sulphur in the Outer Continental Shelf (OCS) of the United States. The rule specifies leasing procedures and basic lease conditions and is intended to ensure that the affected States and the public have an early opportunity for effective participation in the leasing process. The rule would be the second in a series of three rules designed to establish a comprehensive leasing and regulatory program for OCS minerals other than oil, gas, and sulphur. The series of rules recognizes the special circumstances, issues, and requirements associated with those OCS minerals. It establishes practices and procedures for wise management of OCS resources, permitting balanced, orderly leasing of minerals other than oil, gas, and sulphur while protecting the human, marine, and coastal environments; preserving and maintaining free enterprise competition; and minimizing or eliminating conflicts between OCS mineral activities and other uses and users of the OCS.

DATE: Comments must be hand delivered or postmarked no later than October 3, 1988.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Attention: Gerald D. Rhodes; telephone (703) 648-7816; (FTS) 959-7816.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella; Branch of Rules, Orders, and Standards; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone (703) 648-7816 or (FTS) 959-7816.

SUPPLEMENTARY INFORMATION:**Synopsis**

The Minerals Management Service (MMS) is establishing a separate regulatory regime governing activities associated with prospecting for, the leasing of, and leasehold operating

activities associated with the development and production of OCS minerals other than oil, gas, and sulphur. The new regulations are designed to recognize the difference between the OCS activities associated with the discovery, development, and production of oil, gas, and sulphur and those associated with the discovery, development, and production of minerals other than oil, gas, and sulphur. These regulations address issues identified by MMS as well as issues raised by representatives of industry (potential OCS mineral lessees and permittees under these regulations), other Federal Agencies, State and local governments, and the public. To accomplish this goal, it was felt that the regulatory regime should be designed to do the following:

(1) Recognize the special circumstances, issues, and requirements associated with the discovery, development, and production of those OCS minerals;

(2) Assure that States, and through the States, local governments which are directly affected by OCS mineral mining activities, are provided an opportunity for consultation and coordination on policy and planning decisions relating to the management of OCS resources;

(3) Avoid or minimize conflicts between OCS mineral mining activities and other ocean users and uses;

(4) Balance orderly mineral resource development with protection of the human, marine, and coastal environments;

(5) Insure the public a fair and equitable return on the resources of the OCS;

(6) Preserve and maintain free enterprise competition;

(7) Encourage development of new and improved technology for OCS mineral resource development which will avoid or minimize risk of damage to the human, marine, and coastal environments; and

(8) Establish practices and procedures for wise and efficient management of the natural resources of the OCS.

This rule proposes practices and procedures specific to the activities associated with the leasing of OCS minerals other than oil, gas, and sulphur. Regulations are also being developed to govern postlease operations.

Background

On September 28, 1945, the United States declared its jurisdiction over the natural resources of the continental shelf with the Truman Proclamation, "Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed on the Continental

Shelf." At the same time, President Truman placed these natural resources under the jurisdiction of the Secretary of the Interior (Secretary) by Executive Order pending the enactment of legislation. Congress passed the OCS Lands Act (OCSLA) in 1953 and delegated the administration of the OCS mineral resources of the United States to the Department of the Interior (DOI), giving legislative expression to the Truman Proclamation. Section 8(k) of the OCSLA provides the specific legal authority for leasing OCS minerals other than oil, gas, and sulphur. Section 8(k), in combination with the 20 other sections of the OCSLA which are applicable in whole or in part to OCS minerals other than oil, gas, and sulphur, provides the responsibility and authority for management of those mineral resources.

This proposed rule is an action within DOI's statutory authority and is intended to promote and encourage private enterprise in the development of economically sound and stable domestic materials industries in the United States and provides an appropriate level of protection for the human, marine, and coastal environments.

Under the National Materials and Minerals Policy, Research, and Development Act of 1980 (NMMPRDA) (30 U.S.C. 1601 *et seq.*), the President is " * * * to encourage Federal agencies to facilitate availability of domestic resources to meet critical needs." The statute further mandates that the President direct " * * * the Secretary of Interior to act immediately within the Department's statutory authority to attain the goals contained in section 21a of this title * * *." The section 21a to which the statute refers is section 21a of the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) which provides the following:

The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, [and] (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, * * *

President Reagan reemphasized this theme in April 1982 by stating in the National Minerals and Materials Program Plan that this country will seek to reduce its dependence on imported minerals by eliminating barriers to the development of marine minerals resources. The MMS believes that

issuance of comprehensive regulations for activities associated with OCS mineral discovery, development, and production which recognize the need for environmental protection and the avoidance of unnecessary conflict with other users of the oceans is in full accord with Federal policies. Implementation of this rule is appropriate in view of the resource potential in the areas of U.S. jurisdiction and the long lead times projected for development of certain OCS minerals other than oil, gas, and sulphur.

The lack of comprehensive regulations applicable to prospecting, leasing, and recovery of minerals other than oil, gas, and sulphur from the OCS may have

inhibited interest in development of a domestic marine mining industry. This has not been the case in Europe and Asia where vigorous marine mining industries have developed with government regulation. This rule is intended to dispel uncertainty and demonstrate governmental commitment to OCS mineral development and production. Regulations in 30 CFR Parts 251 and 256 are presently applicable to OCS prelease prospecting and scientific research activities and to the leasing of all OCS minerals. However, these existing regulations were designed primarily for oil and gas and to a lesser degree sulphur, and MMS believes that there is a need for regulations

specifically designed for use with OCS minerals other than oil, gas, and sulphur. For such minerals, leasing and operating criteria with respect to lease size, term, and specific operating conditions can be substantially different from those that are associated with oil, gas, and sulphur.

In the United States, industry interest in OCS mining has been focused on heavy metal placers, strategic minerals, sand and gravel, and phosphorite. Table 1 lists the permits that have been issued under existing regulations by MMS and its predecessor Agencies to prospect for OCS minerals other than oil, gas, and sulphur.

TABLE 1.—GEOLOGICAL AND GEOPHYSICAL PERMITS ISSUED TO PROSPECT FOR OCS MINERALS OTHER THAN OIL, GAS, AND SULPHUR

OCS region	Permittee	Minerals of interest	Year
Atlantic	Newport News Shipbuilding	Phosphate	1966
Pacific	Ocean Resources, Inc.	Phosphorite	1967
Pacific	Bear Creek Mining Co.	do	1967
Atlantic	Global Marine, Inc.	Sand and gravel	1969
Atlantic	Oceans International, Inc.	Heavy minerals	1969
Pacific	Global Marine, Inc.	Sand and gravel	1969
Atlantic	Deepsea Ventures, Inc.	Manganese nodules	1970
Gulf of Mexico	Radcliff Materials, Inc.	Sand and gravel	1975
Alaska	Harding Lawson	do	1982
Alaska	Sohio	do	1982
Alaska	Tenneco	do	1982
Alaska	Geocubic	do	1983
Alaska	Geocubic	do	1983
Alaska *	Woodward	do	1983
Alaska *	Woodward	do	1983
Alaska	Sohio	do	1983
Alaska	Dames & Moore	do	1983
Alaska	Dames & Moore	do	1983
Alaska	Harding Lawson	do	1983
Alaska	Harding Lawson	do	1983
Alaska	Harding Lawson	do	1983
Alaska	McClelland	do	1983
Alaska *	McClelland	do	1983
Alaska *	Harding Lawson	do	1984
Alaska *	Harding Lawson	do	1984
Alaska	Ertec	do	1984
Alaska	Harding Lawson	do	1984
Alaska	Harding Lawson	do	1984
Alaska	Harding Lawson	do	1984
Alaska	MTS	do	1984
Alaska	Comap	do	1984
Alaska *	Comap	do	1984
Alaska	Sohio	do	1984
Alaska *	Sohio	do	1984
Alaska	Harding Lawson	do	1984
Alaska	Union	do	1984
Alaska	McClelland	do	1984
Alaska	McClelland	do	1984
Alaska	Harding Lawson	do	1985
Alaska	Harding Lawson	do	1986
Atlantic *	E.I. Du Pont de Nemours & Company, Inc.	Heavy minerals	1986
Atlantic *	Associated Minerals Co.	do	1986
Pacific	East-West Center	Coilball-rich crusts	1986
Alaska *	Inspiration Gold, Inc.	Heavy minerals	1986
Atlantic	Geomarex	Carbonate sands	1987

* No geological or geophysical data acquisition activities were initiated under these permits.

† Two separate permits were issued, one for geological work and one for geophysical work.

Gold is being recovered from placer deposits in Alaska's State waters near Nome, and sand and gravel are being

produced from Lake Erie and the lower bay of New York Harbor in New Jersey's and New York's State waters.

Interest has been expressed in acquiring prospecting permits for sand and gravel in Federal offshore waters.

Due to the growing interest in OCS minerals, MMS is working closely with the Bureau of Mines (BOM) to assess the economic feasibility of mining OCS minerals. Two studies dealing with sand and gravel and heavy minerals were completed in early 1987: "An Economic Reconnaissance of Selected Sand and Gravel Deposits in the U.S. Exclusive Economic Zone," Open File Report 3-87, and "An Economic Reconnaissance of Selected Heavy Mineral Placer Deposits in the U.S. Exclusive Economic Zone," Open File Report 4-87. Both of these reports are available from the Bureau of Mines; Division of Minerals Availability; 2401 E Street NW.; Washington, DC 20241. Preliminary indications are that heavy mineral placers, sand and gravel, and precious metal placers in near shore waters have the nearest term potential for development. Other published studies on OCS minerals include the evaluation of cobalt-rich manganese crusts, polymetallic sulfides, and phosphorites.

The MMS is working closely with a number of coastal States through joint State/Federal task forces and other cooperative arrangements to study the engineering, economic, and environmental aspects associated with marine mining. Six such arrangements have been established involving 10 coastal States: Hawaii; Oregon and California; Georgia; North Carolina; Alabama, Louisiana, Mississippi, and Texas; and Alaska.

Most mineral production activity on the continental shelves is for sand and gravel for use as construction aggregate and fill. The most extensive marine sand mining occurs in Japan, where approximately 1,000 small dredges produce 60 to 70 million tons of sand (and some gravel) annually for use in concrete as well as for fill. This is about one-fifth of all sand and gravel mined in Japan.

The other major sand and gravel mining area in the world is northern Europe, in the North Sea and English Channel, where about 100 dredges annually produce 40 to 50 million tons of sand and gravel, largely for use as concrete aggregate. The United Kingdom, the Netherlands, Denmark, and France have been the major producers. The United Kingdom obtains an estimated 15 percent of its total concrete aggregate by marine mining.

Next to sand and gravel, the largest marine mining operations are for tin in Indonesia and Thailand where significant production results from seabed dredging and where continued exploration and development can be anticipated. In Thailand, large-scale marine tin mining operations account for

half of that nation's production which totaled 37,000 metric tons (tin content) in 1986.

Phosphorite deposits also hold promise for development in the near term. Some of the most promising prospects are the phosphorite deposits of the Chatham Rise east of New Zealand. A New Zealand company, Fletcher Challenge, has been exploring the deposits on the Chatham Rise in association with two West German firms, Preussag and Salzgitter. It has been reported that German mining engineers are designing mining equipment to recover these deposits which lie in 1,200 feet of water. Other prospective phosphorite deposits are located off the West Coast of Africa. These deposits have been under investigation by a French firm.

A major deep ocean mining project in the Red Sea now under consideration is the development of metalliferous muds containing zinc, copper, and silver in 6,500 feet of water. This project is now entering a pilot stage of production that will involve a 5-year investigation of mining and processing strategies. A Saudi/Sudanese joint commission is managing the project with technical assistance provided by German and French firms.

Exploration activity for manganese nodules is also continuing, at a pace significantly reduced from the 1970's, in international waters in the Clarion-Clipperton fracture zone in the northeastern equatorial region of the Pacific Ocean.

The West German firm, Preussag, in cooperation with Japanese and U.S. firms, is also conducting detailed investigations of cobalt-rich manganese crusts in the Hawaiian Archipelago and Johnston Island EEZ's as well as other mid-Pacific areas. One or more Japanese firms has been exploring for polymetallic sulfides in the Pacific basin for the past 2 years and have now added cobalt-rich manganese crusts in the mid-Pacific area to their exploration objectives.

Minerals other than oil, gas, and sulphur in the OCS include over 80 different commodities, including a number of strategic minerals with limited domestic availability. Although OCS resource data are limited, estimated quantities of minerals associated with cobalt-rich manganese crusts would appreciably increase the U.S. reserve base for strategic materials such as cobalt, nickel, and manganese. Another strategic mineral possibility is platinum. Existing world ore reserves for these minerals are adequate in the foreseeable future, but with respect to cobalt, nickel, and manganese, they are

controlled by relatively few producer countries that could potentially leverage commodity prices.

The OCS deposits that have nearer term economic potential include heavy-mineral placer containing gold, chromium, platinum-group minerals, tin, and titanium as well as sand and gravel for construction materials. Phosphorite crusts and nodules, as well as extensive bedded deposits off the U.S. east coast, are a potential future source of phosphate—now a major U.S. mineral export and an essential mineral import to many world agricultural regions.

The OCS polymetallic sulfide deposits containing zinc, copper, lead, silver, and other metals have long-term but little near-term potential as they pose new mining problems and must compete with a large number of alternative onshore domestic and foreign sources. Economic production from OCS deposits, as in onshore deposits, is ultimately dependent upon cost-competitive mining systems, ore grade, and commodity markets.

The MMS recognizes the potential for environmental impacts as a result of OCS mineral activities. These possible impacts will be identified and appropriate mitigation measures determined throughout DOI's environmental review process. Through the National Environmental Policy Act (NEPA) process, MMS's preparation of prelease environmental evaluations addressing proposals to lease in identified areas will provide a series of opportunities for public involvement in the evaluations of environmental impacts. It is anticipated that an Environmental Impact Statement (EIS) will be prepared in connection with the decision to hold the first lease sale in an area. Commodity-specific issues will be covered by specially designed lease stipulations. The mining activities and their potential impacts will be covered in more detail in the environmental evaluations carried out as part of the decisionmaking process for all phases of OCS minerals mining. Site-specific issues identified after the issuance of a lease will be addressed through the conditions of approval for operating activities.

Under this approach and based on information obtained as a result of MMS's Environmental Studies Program (ESP), MMS believes that protection of the environment can be compatible with recovery of minerals from the OCS.

Two sale-specific EIS's have been completed or are in the process of completion. They are for (1) sand and gravel in the Beaufort Sea off Alaska published as a final EIS in March 1983

and (2) cobalt-rich manganese crusts in the Hawaii and Johnston Island EEZ's published as a draft EIS. The notice of availability for the Hawaii draft EIS was published in the Federal Register on March 27, 1987 (52 FR 9958), with public comments due by June 25, 1987. The comment period was subsequently reopened from December 10, 1987, until February 8, 1988. In addition, in December 1983, MMS published a draft EIS for metalliferous sulfides in the Gorda Ridge off California and Oregon. After studies showed that industry was not interested in a lease sale in this

area, the EIS was cancelled by a Federal Register Notice published March 31, 1988 (53 FR 10447).

Program History

Federal study of OCS mining began as an outgrowth of the concern with mineral shortages during and after World War II and the Korean Conflict. In the early 1950's, President Truman created the Paley Commission to investigate means to avoid shortages. This was followed by major studies by the National Academy of Sciences (NAS), the National Academy of

Engineering (NAE), and others which further focused attention on the critical nature of steadily declining mineral resources in terms of U.S. and foreign supplies, U.S. vulnerability, and national goals.

During the period of 1958 through 1988, seven lease offerings were completed for salt, sulphur, and phosphate minerals using the regulations under the OCSLA as a basis for the actions. Over \$54 million were received by the Federal Government in bonuses and rents during this period (See Table 2).

TABLE 2.—MINERALS MANAGEMENT SERVICE

Lease offering	Date of offering	Location	No. of tracts offered	Acres offered	No. of tracts bid on	Total bonus high bid	No. of tracts leased	No. of bids rejected	No. of bids received
Gulf Of Mexico Salt and Sulphur Lease Offerings									
1	Oct. 23, 1954	Sul-LA	108	523,630	5	\$1,233,500	5	0	5
8	May 19, 1960	Sa-LA	10	22,085	1	75,250	1	0	1
13	Dec. 14, 1965	Sul-TX	658	957,520	50	33,740,309	50	0	113
17	Sept. 5, 1967	Sa-LA	8	16,995	1	30,564	1	0	1
20	May 13, 1969	Sul-LA	120	165,605	38	3,678,045	4	34	43
S/S	Feb. 24, 1988	Sul-CGOM	51	593,971	14	15,149,327	14	0	20
Totals			955	2,279,806	109	53,906,995	75	34	183

Total amount of all bids received for all lease offerings—\$82,527,068.

Total amount of all rentals for all lease offerings—\$297,860.

Pacific Phosphate Lease Offering

PH	Dec. 15, 1961	So-CA	16	80,640	6	\$122,000	6	0	6
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Total amount of all bids received—\$122,000.

[Total bonuses (and rentals) were refunded due to discovery of unexploded Naval projectiles on ocean floor.]

In 1970, in its report to Congress, the Public Land Law Review Commission concluded that the regulations associated with the OCSLA, which were designed primarily for oil and gas, were not conducive to the development of other minerals. The Commission also stated that a location system is not desirable and that where competition is known to exist, competitive bidding procedures should be utilized. The rules being proposed for leasing minerals other than oil, gas, and sulphur are consistent with the Commission's report. The benefits of leasing were reiterated in 1975 by the NAS/NAE Panel on Operational Safety in Marine Mining in its comprehensive report entitled "Mining in the Outer Continental Shelf and the Deep Ocean." This study examined basic issues including the importance and potential of OCS mining, mining technology, environmental protection and safety, regulations, and leasing. The panel recommended that operations be undertaken in representative areas.

Draft OCS hard minerals leasing and postlease operating regulations and a draft EIS were published in 1974. Following public comment, DOI undertook a series of actions culminating in the present policy of leasing on a case-by-case basis in consultation with adjacent States. A proposed long-range program for resource evaluation and lease management was drawn up by the U.S. Geological Survey (USGS) in 1974 but was not funded.

In November 1977, the Director of USGS and the Bureau of Land Management (BLM) recommended establishment of an inter-Agency task force to develop policy recommendations for leasing OCS minerals other than oil, gas, and sulphur. The resulting Program Feasibility Document, published in 1979 with 18 technical appendices, concluded that sufficient national interest and economic incentives existed to support selected commercial-scale mining in the OCS.

On January 19, 1982, DOI announced approval of the development of a leasing program for OCS minerals other than oil, gas, and sulphur on a case-by-case basis. The Secretary published a notice of interpretation in the Federal Register on December 8, 1982 (47 FR 55313), relating to DOI's jurisdiction over OCS minerals other than oil, gas, and sulphur. Further clarification was published in the Federal Register on January 19, 1983 (48 FR 2450).

The case-by-case approach to the leasing of OCS minerals other than oil, gas, and sulphur was selected to provide practical experience with the variety of potential mineral resources found in the OCS, the different potential environmental settings, and the range of potential technologies that might be used. The case-by-case approach provides for management flexibility, opportunity for effective coastal State participation, and extensive environmental review. The regulations will establish a broad regulatory framework; the subsequent lease stipulations will define site-, commodity,

and technology-specific requirements; and the appropriate public and environmental review of leasing proposals will facilitate the consultation and coordination processes authorized under Federal law.

As a first step in the preparation of regulations under this case-by-case approach, an advance Notice of proposed rulemaking to govern geological and geophysical (G&G) prospecting and scientific research relating to minerals other than oil, gas, and sulphur in the OCS was published in the *Federal Register* on December 7, 1984 (49 FR 47871); and a followup Notice of proposed rulemaking was published in the *Federal Register* on March 26, 1987 (52 FR 9758).

The MMS published an advance Notice of proposed rulemaking for leasing OCS minerals other than oil, gas, and sulphur in the *Federal Register* on April 19, 1985 (50 FR 15590).

On April 9, 1986, MMS published an advance Notice of proposed rulemaking (51 FR 12163) to govern postlease operations associated with OCS minerals other than oil, gas, and sulphur.

Public Comments and Agency Responses

The following summarizes the comments received in response to the advance Notice of proposed rulemaking. Numerous comments were received from industry, various Government Agencies (Federal, State, and local), special interest groups, and the public. Agency responses are also included.

Comment—Two commenters expressed concern that the development of lease-related mining regulations under the authority of the OCSLA at this time is both unnecessary and premature.

Response—Considerable public discussion has taken place on the necessity and timeliness of the mining regulations for the OCS. This discussion has occurred at such places as the Biennial Symposia on the U.S. Exclusive Economic Zone in 1983, 1985, and 1987 sponsored by DOI and the National Oceanic and Atmospheric Administration (NOAA); the Edwin B. Forsythe Roundtable on Ocean Hard Minerals Development sponsored by the Year of the Ocean Foundation, Oregon State University; the Ocean Mining Development and American Industry Conference in 1988 sponsored by the Center for Oceans Law and Policy, University of Virginia School of Law; and others. The OCSLA provides clear and specific authority to issue leasing regulations.

Comment—Two commenters felt that a programmatic EIS should be prepared

and basic research completed before preparing leasing regulations.

Response—The heterogeneous nature of the OCS environment, coupled with the great variety of OCS mineral deposits and the numerous methods by which any one of them might be mined, leads to a conclusion that a programmatic EIS addressing all commodities and all environments would be of little value. Accordingly, MMS has decided that it could best address the environmental implications of regulations for OCS mining in a number of ways, including the following:

- Publication of OCS Report No. 87-0035, "Environmental Effects Overview: Marine Mining on the Outer Continental Shelf," to give an early overview of the nature of disturbances to be expected from OCS mining in general and to discuss what is known about the potential for environmental impacts.

- Preparation of environmental evaluations as part of DOI's consideration of an OCS minerals lease sale. These evaluations would be conducted pursuant to the NEPA process and the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508). It is anticipated that an EIS will be prepared in connection with the decision to hold the first lease sale in an area. The specific OCS mining methods to be used to produce the commodities to be developed and produced would be evaluated during the review and approval of lease operating activities. Important environmental concerns would be identified, and measures to mitigate impacts would be developed.

Comment—One commenter suggested that the law was unclear as to which Federal Agency, if any, has jurisdiction over the mining of minerals other than oil, gas, and sulphur in the OCS and that it was also unclear which Agency should have such jurisdiction.

Agency Response—The MMS believes that the law is clear as to jurisdiction for leasing OCS minerals other than oil, gas, and sulphur. Section 8(k) of the OCSLA clearly states that the "Secretary is authorized to grant * * * leases of any mineral other than oil, gas, and sulphur in any area of the Outer Continental Shelf * * * upon such royalty, rental, and other terms and conditions as the Secretary may prescribe * * *." The MMS (and its predecessor Agencies) has clearly demonstrated the ability to successfully manage an OCS minerals leasing program. In addition to an active oil and gas program, MMS has issued leases for sulphur, salt, and phosphates.

Comment—The OCSLA mandates a competitive bidding system that leaves

little room for alternatives. This comment was offered in the context of a suggestion that environmental considerations, including the mitigation of impacts, were not mandated as in the Deep Seabed Hard Mineral Resources Act and might, therefore, not be adequately addressed in the regulations.

Response—The MMS believes that the mandate for environmental analysis and mitigation as addressed by NEPA and reflected in the CEQ regulations found in 40 CFR Parts 1500 to 1508 applies to actions authorized under the OCSLA. Such actions are subject to the applicable provisions of the NEPA, Endangered Species Act, Clean Water Act, and other environmental protection laws and implementing regulations. Regulations are also being developed in 30 CFR Part 282 for OCS mining operations, and specific stipulations will be developed for individual lease sales. In this respect, MMS anticipates that an EIS will be prepared in connection with the decision to hold the first lease sale in an area. Additionally, all proposed lease operations will be submitted for MMS approval. Those activities will be subject to the NEPA evaluation process and the requirements of other Federal statutes. The MMS invites specific comments on the ways that these requirements are thought to be inadequate together with specific suggestions for revisions to address perceived inadequacies.

Comment—One commenter stated that industry should provide contingency plans in case of emergencies.

Response—Contingency plans which set forth actions to be taken in an emergency relate to postlease operations. Therefore, the question of a need for a contingency plan is not addressed in this proposed rule to govern leasing procedures.

Comment—One commenter recommended that lessees be required to demonstrate financial responsibility, technical capability, and integrity for the privilege of mining.

Response—The MMS agrees that it would be counterproductive for leases to be awarded to persons who lacked the ability to meet the obligations of a lessee. Under the proposed rule, financial capability would be evidenced through competitive bidding and the successful bidders' ability to secure required bond coverage. Technical capability will be evidenced by the lease operators' ability to plan and obtain approval for postlease operations.

Comment—A commenter suggested that MMS should provide for public

participation in minerals leasing decisionmaking.

Response—The MMS is in full agreement with the suggestion. Opportunities for public involvement in minerals leasing decisions are provided through the regulatory, leasing, and NEPA processes. States in particular are being encouraged to participate jointly in planning for the development of OCS minerals. A number of coastal States have been and are actively involved in joint State/Federal task forces or other agreements that have been developed with the intent of providing better consultation and coordination as well as effective opportunities for communication and to assure a balanced consideration of Federal, State, and local concerns.

Comment—One commenter recommended that any "lease-related regulations" which MMS might issue at this time should be identified as "conditional, based on limited knowledge and subject to substantial revision."

Response—The MMS does not agree with characterization of final rules as conditional. It may be that the commenter is concerned that much still needs to be learned about the leasing of specific OCS minerals and geographical sites. The MMS proposes to address conditions relevant to specific minerals and sites in specific lease stipulations and conditions of approval for postlease operations. The regulations, on the other hand, are intended to address general requirements applicable to all OCS minerals and sites. Final regulations which emerge at the conclusion of the rulemaking process will be based on the best information available to MMS, including that obtained through public comments on this proposed rule.

Comment—One commenter suggested that the regulations require that the size and scope of offshore lease sales be specified and the specific minerals to be leased be identified.

Response—The lease notice will specify the minerals to be offered for lease, the lease size (which could range from a logical mining unit for the known minerals being offered to a vast area being offered with unknown resource potential), the time period to be covered by the lease, annual rental, royalty, including advance or minimum royalty, site- and minerals-specific protective measures to be accomplished by the lessee, and such other site- and mineral-specific lease terms and conditions as the Secretary may prescribe at the time of the offering.

Comment—One commenter stated that the regulations require analysis of the cumulative impacts of the proposed

activities as well as the need for new and expanded onshore support facilities.

Response—It is not necessary or possible for the proposed regulations to analyze cumulative impacts or predict the need for or types of onshore facilities for leasing and operations not yet proposed. In complying with NEPA, cumulative impacts that could result from a proposed activity will be addressed.

Comment—One commenter suggested that the regulations provide for Federal consistency review under the Coastal Zone Management Act (CZMA) prior to leasing.

Response—The CZMA itself determines whether consistency reviews occur and, if so, when. Under the U.S. Supreme Court ruling in *Secretary of the Interior v. California*, 464 US 312 (1984), Federal consistency review is not applicable at the time of lease sale.

Comment—The comment was made that adequate time should be provided for exploration and production to assure the opportunity of a reasonable return on capital.

Response—The primary term of the lease generally covers that period before production during which exploration and development activities are completed. Preproduction activities for minerals on land may range from a few years for a sand and gravel pit to upward of 30 years for large and complex ore bodies in remote locations. Except for sand and gravel, the proposed rule specifies that the primary term will be for a period of not less than 20 years. The primary term specified in each leasing notice will take into consideration the economic life of a mining operation appropriate to the OCS mineral resources being leased and the location of the lease. The lease term will continue beyond the primary term for as long as the OCS minerals that are subject to the lease are being produced, or the lessee is otherwise complying with provisions of the lease and governing regulations that provide for continuance of the lease in effect.

Comment—One commenter suggested that rentals should be based on resources.

Response—The MMS expects that the mineral resources being leased will be one of the criteria considered when defining the rental that will be specified in the leasing notice.

Comment—A commenter requested that royalty rates under the leasing regulations should reflect the different cost and revenue structures for oil and gas and other minerals.

Response—The MMS recognizes that cost and revenue structures for oil and gas are different from other OCS

minerals. Those differences have been taken into consideration in developing the proposed rule, and they will be considered when the royalty rate for OCS minerals is specified in a leasing notice.

Comment—One commenter suggested that the regulations provide for work commitments so as to encourage serious postlease exploration activities.

Response—The proposed rule does not specifically provide for a work commitment. However, neither does it preclude the Secretary from including such a requirement in a leasing notice.

Comment—A commenter has suggested that a bidder at a sale submit an exploration and development plan with the bid and that failure to follow the plan would result in the lease being cancelled.

Response—This suggestion was not adopted. It would be inappropriate to require such plans from the potentially multiple bidders before the award of leases. Bidders typically would not have developed all information necessary to prepare comprehensive operating plans prior to being awarded the lease. The current DOI systems of plan authorizations for onshore mineral leasing and for offshore oil and gas leasing require a lessee to submit a plan of proposed operations for MMS approval before operations can be conducted on the lease. The MMS expects to use similar procedures for the review and approval of activities to be conducted on a lease.

Comment—A State commenter pointed out that certain mineral deposits might straddle the State/Federal marine boundary which could present problems and urged that MMS join States in a cooperative approach to managing OCS minerals.

Response—To address any OCS mineral deposits which straddle State/Federal jurisdiction, DOI expects to develop an agreement with the adjacent State when joint management is needed. The agreements would assure coordination and cooperation between MMS, agencies of the adjacent State, and State and Federal lessees in order to maximize efficiency, reduce regulatory burden, and obtain the most equitable return to all parties. When a mineral deposit straddles the State/Federal boundary, the lessees of the adjoining Federal and State leases typically will negotiate an appropriate sharing agreement to cover issues that need to be addressed by owners of divided interests in a mining unit which embraces Federal and State leases.

Comment—One commenter suggested that oil and gas regulatory models are not applicable to other minerals.

Response—The proposed rule is modeled after regulations governing solid minerals from onshore Federal leases. The MMS believes that the successful regulation of mining for OCS minerals other than oil, gas, and sulphur can be achieved better through the application of regulations designed for that purpose. However, certain principles are common to all types of leases, such as the need for appropriate environmental evaluation and protection; the opportunity for consultation and coordination with States, the public, and other Federal Agencies; fair economic return to the public on leases; and security of tenure to lessees. As a result, some similarities in the regulations are inevitable and desirable. On the other hand, there needs to be specific recognition of the unique aspects of OCS mining operations to produce minerals in a solid rather than fluid state.

Comment—One commenter was concerned with potential water quality impacts.

Response—Exploration and mining activities will be monitored to ensure the early and accurate detection of potential adverse effects on the environment. This subject will be addressed in MMS's operating regulations for OCS minerals other than oil, gas, and sulphur. In addition, the lessee will be subject to applicable laws governing water quality and to applicable regulations of other Federal Agencies.

Comment—Two commenters suggested that DOI only offer to lease tracts which have proven reserves. They asserted that DOI should know the full value of the minerals to be leased and that DOI should obtain their full value.

Response—It would be cost prohibitive and inappropriate for the Government to discover and delineate OCS mineral deposits and to evaluate those OCS mineral reserves to the extent suggested. However, it is the intent of DOI to enhance the Government's knowledge of resources through the regulatory process. The MMS will establish procedures on a sale specific basis to obtain a fair return on OCS minerals leased.

Comment—Several commenters expressed the view that the OCSLA needs to be amended to provide a legislative basis for mining in the OCS similar to the Deep Seabed Hard Minerals Resources Act.

Response—The MMS does not agree that new legislation is required. Section 8(k) of the OCSLA provides the

Secretary with clear authority for the leasing of OCS minerals. Section 8(k), in combination with other provisions of the OCSLA, provides the Secretary with broad authority to prescribe appropriate terms and conditions to govern OCS mining activities. Recognizing the differences between the production of oil, gas, and sulphur and other OCS minerals, the OCSLA allows greater flexibility in the administration of a program for the development of other OCS minerals.

Comment—One commenter felt that the leasing process should be delayed until NOAA's 5-year research program is complete.

Response—The NOAA's program addresses manganese nodules in the international areas of the deep seabed which lie beyond the OCS as defined by law and the exclusive jurisdiction of the United States and, as such, will have only limited applicability to MMS's leasing program. Nevertheless, the MMS expects to utilize any of the results of that program which prove to be transferrable to OCS mineral deposits. This will be accomplished through the modification of specific provisions of individual leasing notices.

Comment—One commenter suggested that summarized resource estimates from proprietary data should be available to local governments and the public.

Response—The MMS expects to make summarized OCS resource data and information available to States and the public in a form and manner that will protect proprietary data from unauthorized disclosure.

Comment—A commenter remarked that a lessee should have no absolute right to develop and produce a lease; those rights should be contingent upon subsequently determined environmental impacts.

Response—Under the proposed regulations, lessees will obtain the exclusive right to look for, delineate, develop, mine, and process OCS minerals. The exercise of the lessee's right is contingent upon the lessee's compliance with all provisions of the lease, applicable law, and governing regulations. Compliance with the requirements of the aforementioned provisions requires that lease activities be conducted in an operationally safe and environmentally responsible manner.

Comment—One commenter suggested that Government and academic scientists should be free to conduct research on leases.

Response—Activities on a lease by anyone other than a lessee must not interfere with or endanger actual

operations under any lease issued or maintained under the OCSLA. Those activities which can be conducted by scientific researchers on a lease are subject to the G&G prospecting and scientific research regulations in 30 CFR Part 280 for minerals other than oil, gas, and sulphur and 30 CFR Part 251 for oil, gas, and sulphur.

Comment—One commenter suggested that bonuses could be cash, a work commitment, or a combination of both.

Response—Section 8(k) of OCSLA specifies the Secretary grant leases for minerals other than oil, gas, and sulphur " * * * to the qualified persons offering the highest cash bonuses on a basis of competitive bidding * * * " (emphasis added).

Issues and Alternatives

Most of the provisions of the proposed regulations are self-explanatory. However, several of the provisions and their alternatives merit further explanation as follows. Comments are specifically invited on these issues.

(1) *Lessee Qualifications.* The MMS is committed to encouraging the rational development of mineral resources in U.S. waters. The qualification requirements set forth in 30 CFR 256.35 have served DOI's purposes well. Therefore, it is proposed that those qualifications continue to be applicable to lessees of OCS minerals other than oil, gas, and sulphur. Restrictions, if any, which might be placed upon joint bidding for a lease on OCS minerals other than oil, gas, and sulphur will be specified in the leasing notice.

(2) *Initiation of Leasing.* The leasing procedures for OCS minerals other than oil, gas, and sulphur are different from those of oil and gas in several ways. The oil and gas leasing process provides for a 5-year program for leasing; whereas, these regulations provide for leasing on a case-by-case basis. The Secretary may offer leases for OCS minerals other than oil, gas, and sulphur on DOI's initiative or when requested by an interested principal.

If DOI has not initiated the process leading to a lease sale in an area, someone who is interested in obtaining a lease covering OCS minerals could request that a lease sale be held. This is what happened in the case of the lease sale being prepared for OCS minerals off Alaska. Other interested parties, such as coastal States, could also ask the Secretary to initiate activity in an area. A State that is aware of interest in an area could recommend that a lease sale be held or that a joint State/Federal task force be formed to study the

potential of an area and initiate coordination and planning activities.

(3) *State and Other Public Participation.* Once a potential leasing area has been identified, the process would follow the procedures in the proposed rule. These leasing procedures follow many of the steps for the public participation provided for in the oil and gas regulations, but they also provide for the use of joint State/Federal task forces or other arrangements. Once a proposed leasing area is identified, leasing plans may be developed with representation from the adjacent coastal State(s) through a State/Federal task force or other mechanism as agreed upon by the Secretary and the appropriate State Governor(s). Also, under the proposed rule, adjacent State(s) will be provided other opportunities for review and comment. In addition to State opportunity to initiate activity as previously discussed, these proposed regulations also provide for public participation through scoping meetings, requests for OCS mineral information and interests, preparation of required NEPA documents for proposed lease offering, and proposed leasing notices.

Section 281.13 provides for joint State/Federal task forces and other mechanisms for coordination. These task forces and other arrangements are intended to provide for early and continued State involvement in the leasing process, to facilitate the resolution of issues of mutual interest, and to conduct other activities which the Secretary and the Governor mutually identify. Task forces of this nature have already been established in several areas and have participated in a variety of activities. For example, a task force established with the State of Oregon has conducted joint State/Federal research studies. A coordination team established with the State of Alaska will be participating in the preparation of an EIS. Another task force established with the State of Hawaii is developing a joint State/Federal EIS.

(4) *Tract Size.* Lease tracts are not planned to be limited to any predetermined size. Lease tracts for OCS minerals other than oil, gas, and sulphur may be considerably different in size as compared to oil and gas lease tracts. The size of the tracts will be determined by the OCS mineral(s) involved and by the exploration and production requirements of deposits of such minerals. For example, leases for OCS mineral deposits which occur in thin surficial layers characterized by the cobalt-rich manganese crusts off Hawaii will require a considerably larger area

than a thick sand and gravel deposit or a massive sulfide deposit. In determining tract size, MMS will consider the need for a tract to be large enough to permit a volume of production sufficient to make a lease economically worth developing.

Lease tract size will also be affected by the amount of prospecting which occurs prior to a lease sale. In cases where prospecting permits are obtained and OCS minerals located prior to a lease offering, MMS will have sufficient information available to specify leases of a size which nearly approximate a logical mining unit for the OCS minerals of interest. In other cases, when there is little information on the presence of OCS minerals other than oil, gas, or sulphur, MMS may establish relatively larger tract sizes to be offered for lease as logical exploration units. When large size leases are offered to encourage the development of information and discovery of OCS minerals, the Secretary may specify a relatively low rental rate in the offer to lease.

(5) *Lease Term.* Section 281.19 indicates that except for sand and gravel, leases for OCS minerals other than oil, gas, and sulphur will be issued for a primary term of not less than 20 years as stipulated in the leasing notice. A lease term of more than 20 years may be specified when the additional time is needed to permit lessees to explore and develop the lease, taking into account the mineral resources, the environmental setting, the state-of-the-art of recovery and processing technologies, and other appropriate factors. Following commencement of production or expiration of the primary term, the lease would remain in force as long as production continues, or the lessee is otherwise complying with provisions of the lease or regulations for earning a continuance of the lease in force.

Commenters are invited to respond to the following questions:

- Is 20 years the appropriate length for the regulations to set as the minimum primary term for OCS minerals other than sand and gravel?

- Should a different minimum length be set or should no minimum be set allowing the determination to be made at the time of the leasing notice?

(6) *Leasing Notice.* A sale will be preceded by both a proposed leasing notice and leasing notice. The proposed leasing notice would propose lease sizes, duration of lease, environmental stipulations, and financial considerations which may include rentals, royalties, and bonding requirements other than those specified

in the proposed rule. The proposed leasing notice will provide Federal and State agencies, industry, public interest groups, and the public an opportunity to comment on the terms and conditions proposed for specification in the leasing notice. These comments and recommendations will be considered when the Secretary decides whether the leasing notice will be developed and published or withheld.

(7) *Minimum Bid.* A minimum cash bonus bid may be specified in the leasing notice as a condition of sale. When specified, the minimum cash bonus bid would be the minimum amount which would be considered a submissible bid for the tracts being offered. The minimum bid may represent a computed value of the contained resource based on available data, or it may be based on some other criteria. It is likely that the resource data known for each tract will be different, and the following options are suggested as being available.

(a) In areas where resource data are sparse or unavailable and it is in the public interest to encourage exploration by making exclusive rights of OCS mineral discovery available to a lessee at a minimum cost, a leasing notice may omit the specification of a minimum acceptable bid. Lease tracts could be large enough (e.g., 10 blocks/58,000 acres) to allow for discovery with subsequent relinquishment of unexplored areas. Diligence and fair return could be assured through use of the special rental and royalty requirements.

(b) A minimum bid based on other criteria such as (1) a sum estimated to cover the Government's cost of the sale, (2) a sum sufficient to discourage nuisance bidding, or (3) a sum equal to an assessment per ton on MMS's estimates of recoverable resources. The latter situation might arise in the leasing of a sand and gravel tract for a specific project.

(8) *Bonus.* The proposed regulations provide that tracts be offered for lease by competitive cash bonus bids.

Commenters are invited to respond to the following questions:

- Should the final rule specifically provide for deferral of a part of the cash bonus?

- If the final rule provides for deferral of a specified part of the cash bonus bid, how and when should the payment of the deferred portion be made and what mechanism should be used to assure that the deferred portion would in fact be paid?

(9) *The OCS Minerals Covered by a Lease.* Unless otherwise specified in the

leasing notice, an OCS minerals lease will include rights to all minerals, except OCS minerals already leased, oil, gas, sulphur, and reserved deposits of salt, sand, and gravel. Deposits of salt might be reserved in areas where the salt may be needed for sulphur production. Sand and gravel deposits might be reserved in areas where the sand and gravel might be needed to build gravel islands used for oil and gas or sulphur production.

The MMS believes that the option identified in the proposed rule (i.e., all minerals and all depths) encourages efficiency in the mining of OCS minerals by minimizing the environmental impacts on the leased area. To lease less than all minerals at a time would require that other OCS minerals be leased at a later time. In some cases, this would result in unnecessary repeating of environmental impacts which could be experienced once if the area is mined for all minerals at one time. In instances where limits on mineral rights are appropriate, specific limits will be identified in the proposed leasing notice allowing MMS to consider the comments of interested parties prior to publication of the leasing notice. By providing that other provisions may be specified in the leasing notice, the proposed rule retains the flexibility to permit the Secretary to issue leases limited in application to specific target mineral(s) or to specific depths below the seafloor. In cases where specific target minerals are identified in the leasing notice, the lease would also include the right to minerals produced in direct association with production of the primary minerals.

Interested parties are invited to respond to the following questions:

- Under what circumstances should MMS limit the minerals other than oil, gas, and sulphur for which mineral rights are included in a lease?

- If limits are needed for a specific lease sale, how should the limits be specified (e.g., by identifying specific minerals, by limiting depth)?

(10) *Bidding Systems*. Under the proposed rule, leases would be awarded on the basis of highest cash bonus bid as provided for in the OCSLA. Competitive cash bonus bidding provides an opportunity for more informed bidders (e.g., companies involved in prelease prospecting) to outbid their competition, thereby making economic use of the result of investments in prelease prospecting. The date, time, place, and bidding system to be used would be announced in the leasing notice. The bidding system to be used would be designed to provide a fair return to the lessor and to encourage exploration, development, and production. Two basic bidding

procedures are being proposed. The leasing notice will specify which of the bidding procedures will be used at the time OCS minerals are offered for lease.

(a) *Oral Bidding*—The highest cash bonus bid at an oral auction would identify the high bidder. The leasing notice would specify conditions such as the applicable rental and royalty rates. Tract-specific minimum bids might also be specified in the leasing notice. When a minimum bid is specified in the leasing notice and a tract does not receive a bid that is equal to or greater than the specified minimum bid, the royalty rate for that tract may be sequentially reduced until a cash bonus bid equal to or greater than the specified minimum bid is received. In an oral auction, the highest bid would be accepted subject to clearance under antitrust review if it is viewed by the Secretary as representing the value of the rights to be granted under the lease. Oral bidding avoids the commitment of the winner's resources above that necessary to secure the lease. As a consequence, money which would have been "left on the table" under a sealed bidding procedure would be available to pay for future exploration and production.

(b) *Sealed bidding*—The highest cash bonus bid would identify the highest bidder. In the event the highest bids result in a tie, the winner could be determined by oral auction between or among the tied bidders. No bid would be accepted or rejected at the sale.

Subsequently, the high bidder would be notified whether the bid is accepted or rejected. Where many tracts are to be offered, sealed bidding presents certain administrative advantages. Rather than offering each tract sequentially for oral bid, sealed bids are received simultaneously and read aloud at the sale, saving considerable time.

(11) *Rentals*. The proposed rule provides that unless otherwise specified in the leasing notice, the annual rental payment specified in the lease will not apply during the first 5 years following issuance of the lease (i.e., the first payment of the annual rental specified in a lease will be due and payable on or before the fifth anniversary of a lease). The leasing notice will specify the rental payment applicable to each lease. The leasing notice may specify the escalation of rental payments.

Commenters are invited to respond to the following questions:

- Should the annual rental specified in a lease be a fixed amount (e.g., \$5,000 per year) or should it be based upon the size of the area leased (e.g., \$1 per acre or part thereof per year)?

- Should the regulations provide for escalating rentals?

(12) *Royalties*. Royalty is a payment to the U.S. Government of a portion of the amount or value of production saved, removed, or sold from the lease. Lease management regulations for minerals other than oil, gas, and sulphur produced from onshore Federal leases prescribed a royalty of "not less than 2 percent for sodium and potassium components and related products." The royalty that will be due under an OCS mineral lease will be specified in the leasing notice. The specified royalty is expected to be comparable to the royalty assessed on the production of similar minerals from onshore leases. The proposed rule provides that when prescribed in the leasing notice and subsequently issued lease, no royalty will be due on OCS minerals produced from a leasehold for up to any 5 years, as specified by the lessee, during the first 10 years in the life of the lease. This provision is designed to encourage early development of production.

- The MMS requests specific comments on all elements of the timing and potential effects of this proposal.

It is likely that when a fixed royalty is prescribed, the prescribed royalty will be in the range of 2 to 5 percent of the value or amount of production.

The royalty specified in the leasing notice offering an area for lease may be based on a specified percentage of the gross proceeds accruing to the lessee from the OCS minerals produced from the leasehold. A royalty based on gross proceeds accruing to the lessee results in an automatic commodity-price-adjusted return to the Government. A specified sum (e.g., \$5 per ton) assessed per unit of product saved, removed, or sold from the leasehold is another form in which royalty might be specified in a leasing notice. When the royalty is expressed as a percentage of the value or amount of production or gross proceeds, MMS's Royalty Management Program regulations will be used to determine the royalty valuation basis to be used.

Commenters are invited to respond to the question of whether other royalty options should be considered.

(13) *Minimum Royalty*. Section 281.30 provides that payment of an annual minimum royalty will be required starting with the year in which OCS minerals are produced (saved, removed, and sold) from the leasehold. The leasing notice and subsequently issued lease will specify the amount of the annual minimum royalty payable under a lease. Minimum royalty payments are to be due at the beginning of and payable within 30 days following the

end of the lease year for which they are due.

(14) *Overriding Royalty.* An overriding royalty is a royalty created out of the leaseholder's interest and is in addition to that royalty paid to the U.S. Government. The proposed rule limits the total overriding royalty interest to no more than 50 percent of the royalty paid to the United States. Overrides may increase costs on a lease to the extent that they could cause premature abandonment of lease operations and may preclude the mining of marginally economic deposits which in the absence of overriding royalty costs could be produced economically. Similar curbs have been placed on overriding royalties on onshore mineral leases. These limitations preclude the development of excess overriding royalties that might discourage a new lessee from going forward with exploration, development, or production of an OCS mineral deposit.

Commenters are invited to respond to the following questions:

- Should overrides be prohibited?
- Should different limitations be provided?

(15) *Waiver, Reduction, or Suspension of Rentals or Royalties.* There may be times when a lease cannot be operated successfully under the rentals and royalties specified in a lease. This may be especially applicable in an operation such as mining OCS minerals other than oil, gas, or sulphur where costs may be especially difficult to predict. If the Secretary finds that it is in the national interest, it will result in conservation of the natural resources of the OCS, it will promote development, or the mine cannot be successfully operated under existing conditions, the Secretary may waive, reduce, or suspend the royalty specified in a lease.

(16) *Incentives.* Specific incentives to encourage the early initiation of production activities for OCS minerals other than oil and gas or sulphur have been incorporated in the proposed rule. The proposed rule provides that, unless otherwise specified in the leasing notice, there would be no rental due during the first 5 years of a lease. Also, when prescribed in the leasing notice no royalty will be due on production from a leasehold for up to any 5 years, specified by the lessee, during the first 10 years of a lease. Specification of a number of royalty-free years from the start of the lease encourages a lessee to initiate actual production at the earliest possible time.

Comments are invited concerning whether this royalty-free program is warranted to encourage early production and whether 10 years are the

appropriate length of time for this royalty-free period.

Commenters are invited to provide detailed responses (including justification and proposed procedures for implementation) to the following questions:

- Should a lessee be permitted to credit part of the cost of work performed on a leasehold against future payments of rental or royalty due under a lease?
- What other specific forms of incentives should be considered for encouraging development and production of OCS minerals other than oil, gas, and sulphur?
- Should specific incentives be limited in size or application to specific OCS minerals? (Identify incentives together with the OCS minerals involved.)

(17) *Bonding.* Section 281.33 provides for the submission of a surety bond prior to the commencement of activity on a lease. The purpose of the bond is to protect the Government's financial interest in the event a lessee fails to meet royalty or other obligations under a lease.

(18) *Assignment.* Subpart D provides for assigning a lease or interests therein. When the assignment of a lease or an interest therein is approved by the Secretary, it becomes effective on the first day of the month following the month in which the request for approval is submitted to the Director unless the parties request an earlier effective date. The assignment must be accompanied by a nonrefundable filing fee. If a divided portion of a lease acreage is assigned, the assigned and retained portions become separate leases and retain the lease terms and conditions in effect at the time of the assignment.

(19) *Environmental Baseline Information.* The MMS anticipates that the first OCS mineral lease sale in an area will be preceded by the preparation of an EIS. In order to prepare an adequate document, it must contain a reasonable characterization of the environment in which the postlease activities will take place. A number of approaches will be followed in the development of the needed information.

In those instances where the MMS's Environmental Studies Program (ESP) has not and is not expected to develop needed data and information, a prospector could be required to acquire environmental information during prospecting activities under a prospecting permit so that, by the time a lease sale is being planned, all prospectors' data will collectively comprise a reasonable body of information to provide a basis for MMS's review and evaluation of the

environmental impacts associated with OCS mineral development and production. Where time permits, MMS may adjust its ESP to develop the needed data and information.

Authors:

Andrew Bailey, Charles Ham, John Mirabella, Jane Roberts, and William Wolf of the MMS; Michael Cruickshank of the USGS (retired); Ransom Read of the BOM; and Ronald Smith and Donal Ziehl of the BLM; John Padan of NOAA, Department of Commerce; and Joseph Wilson of the Corps of Engineers, U.S. Army.

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an EIS is not required.

The DOI has also determined that the document is not a major rule under Executive Order 12291 because the annual economic effect is less than \$100 million. The overall effect is expected to be approximately \$2.2 million per year. The cost estimate is based on an expectation of two sales per year.

The DOI also certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) as the entities that engage in OCS minerals related activities are not considered small due to the technical complexity and financial resources needed to conduct those OCS activities.

The information collection requirements contained in 30 CFR Part 281 have been submitted to the Office of Management and Budget (OMB) for approval under 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by OMB.

Public reporting burden for this collection of information is estimated to average 23.1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer; Minerals Management Service; Mail Stop 631; 12203 Sunrise Valley Drive; Reston, Virginia 22091; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Oil and gas exploration, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

30 CFR Part 281

Administrative practice and procedure, Bonds, Continental shelf, Mineral royalties, Minerals Management Service, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: July 8, 1988.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set forth above, it is proposed that 30 CFR Part 256 be amended and that a new Part 281 be added to Subchapter B of Title 30 of the CFR as follows:

PART 256—[AMENDED]

1. The authority citation for Part 256 would continue to read as follows:

Authority: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U.S.C. 131 *et seq.*, as amended, 92 Stat. 629.

§ 256.4 [Amended]

2. Section 256.4 would be amended by adding the word "and" before the word "sulphur" and by removing the words "geopressed-geothermal and associated resources, and other minerals" from the first sentence.

3. Section 256.5 would be amended by revising paragraph (k) to read:

§ 256.5 Definitions.

* * *

(k) "Mineral" means oil, gas, and sulphur; it includes sand and gravel and salt used to facilitate the development and production of oil, gas, or sulphur.

* * *

§ 256.37 [Amended]

4. Section 256.37 would be amended by removing paragraph (d).

§ 256.58 [Amended]

5. Section 256.58 would be amended by removing paragraph (d), and redesignating paragraphs (e) through (g) as paragraphs (d) through (f).

6. A new Part 281 would be added to read as follows:

PART 281—LEASING OF MINERALS OTHER THAN OIL, GAS, AND SULPHUR IN THE OUTER CONTINENTAL SHELF

Subpart A—General

Sec.

- 281.0 Authority for information collection.
- 281.1 Purpose and applicability.
- 281.2 Authority.
- 281.3 Definitions.
- 281.5 Qualifications of lessees.
- 281.6 False statements.
- 281.7 Appeals.
- 281.8 Disclosure of information to the public.
- 281.9 Rights to minerals.
- 281.10 Jurisdictional controversies.

Subpart B—Leasing Procedures

- 281.11 Request for a lease sale and submission of information.
- 281.12 Request for OCS mineral information and interests.
- 281.13 Joint State/Federal coordination.
- 281.14 OCS mining area identification.
- 281.15 Tract size.
- 281.16 Proposed leasing notice.
- 281.17 Leasing notice.
- 281.18 Bidding system.
- 281.19 Lease term.
- 281.20 Award of leases.
- 281.21 Lease form.
- 281.22 Effective date of leases.

Subpart C—Financial Considerations

- 281.26 Payments.
- 281.27 Annual rental.
- 281.28 Royalty.
- 281.29 Royalty valuation.
- 281.30 Minimum royalty.
- 281.31 Overriding royalties.
- 281.32 Waiver, suspension, or reduction of rental, minimum royalty, or production royalty.
- 281.33 Bonds and bonding requirements.

Subpart D—Assignments

- 281.40 Assignment of Leases or interests therein.
- 281.41 Requirement for filing for transfers.
- 281.42 Effect of assignment on particular lease.
- 281.43 Effect of suspensions on lease term.

Subpart E—Termination of Leases

- 281.46 Relinquishment of leases or parts of leases.
- 281.47 Cancellation of leases.

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 131 *et seq.*, as amended, 92 Stat. 629

Subpart A—General

§ 281.0 Authority for information collection.

The information collection requirements contained in Part 281 have been submitted for approval by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number (to be added upon approval). The information is being collected to determine if the applicant for a lease on

the Outer Continental Shelf (OCS) is qualified to hold such a lease or to determine if a requested action is warranted. The information will be used to make those determinations. The obligation to respond is mandatory.

§ 281.1 Purpose and applicability.

The purpose of these regulations is to establish procedures under which the Secretary of the Interior (Secretary) will exercise the authority granted to administer a leasing program for minerals other than oil, gas, and sulphur in the OCS. The rules in this part apply exclusively to leasing activities for minerals other than oil, gas, and sulphur in the OCS pursuant to the Act (43 U.S.C. 1334(a)).

§ 281.2 Authority.

The OCS Lands Act authorizes the Secretary to issue leases for any mineral other than oil, gas, and sulphur to the qualified persons offering the highest cash bonuses on the basis of competitive bidding upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease (43 U.S.C. 1337(k)) and to prescribe the rules and regulations necessary to carry out the provisions of that Act (43 U.S.C. 1334(a)).

§ 281.3 Definitions.

"Act" means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

"Adjacent State" means with respect to any activity proposed, conducted, or approved under this part, any coastal State—

(1) That is, or is proposed to be, receiving for processing, refining, or transshipment of OCS mineral resources commercially recovered from the seabed;

(2) That is used, or is scheduled to be used, as a support base for prospecting, exploration, testing, and mining activities; or

(3) In which there is a reasonable probability of significant effect on land or water uses from such activity.

"Director" means the Director of the Minerals Management Service (MMS) of the U.S. Department of the Interior or an official authorized to act on the Director's behalf.

"Governor" means the Governor or the person or entity lawfully designated to exercise the powers granted to a Governor.

"Lease" means any form of authorization which is issued under section 8 of the Act and which authorizes exploration for, and development and production of,

minerals, or the area covered by that authorization, whichever is required by the context.

"Lessee" means the party authorized by a lease, or an approved assignment thereof, to explore for and develop and produce the leased deposits in accordance with the regulations in this chapter. The term includes all parties holding that authority by or through the lessee.

"OCS Mineral" means a mineral deposit or accretion found on or below the surface of the seabed but does not include oil; gas; sulphur; or salt, or sand and gravel intended for recovery in association with the production of oil, gas, or sulphur.

"Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Overriding royalty" means a royalty created out of the lessee's interest which is over and above the royalty reserved to the lessor in the original lease.

"Person" means a natural person, a private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof and an association of such natural persons, or private, public, or municipal corporations, States, or political subdivisions of States. The term does not include Federal Agencies.

"Production" means those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, and maintenance.

"Secretary" means the Secretary of the Interior or an official authorized to act on the Secretary's behalf.

§ 281.5 Qualifications of lessees.

(a) In accordance with section 8(k) of the Act, leases shall be awarded only to qualified persons offering the highest cash bonus bid.

(b) Mineral leases issued pursuant to section 8 of the Act may be held only by:

- (1) Citizens and nationals of the United States;
- (2) Aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20);
- (3) Private, public, or municipal corporations organized under the laws of the United States or of any State or of the District of Columbia or territory thereof; or

(4) Associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States.

§ 281.6 False statements.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by up to 5 years imprisonment or a fine of \$10,000, or both, for anyone knowingly and willfully to submit or cause to be submitted to any Agency of the United States any false or fraudulent statement(s) to any matters within the Agency's jurisdiction.

§ 281.7 Appeals.

Any party adversely affected by a decision of an MMS official made pursuant to the provisions of this part shall have the right of appeal pursuant to Part 290 of this title, except as provided otherwise in § 281.20 of this part.

§ 281.8 Disclosure of information to the public.

The Secretary shall make data and information available to the public in accordance with the requirements and subject to the limitations of the Act, the Freedom of Information Act (5 U.S.C. 552), and the implementing regulations.

§ 281.9 Rights to minerals.

(a) Unless otherwise specified in the leasing notice, a lease for OCS minerals shall include rights to all minerals within the leased area except the following:

- (1) Minerals subject to rights granted by existing leases;
- (2) Oil;
- (3) Gas;
- (4) Sulphur;
- (5) Minerals produced in direct association with oil, gas, or sulphur;
- (6) Salt deposits which are identified in the leasing notice as being reserved; and
- (7) Sand and gravel deposits which are identified in the leasing notice as being reserved.

(b) When an OCS mineral lease issued under this part limits the minerals to which rights are granted, such a lease shall include rights to minerals produced in direct association with the OCS mineral specified in the lease but not the rights to minerals specifically reserved.

(c) The existence of an OCS mineral, oil and gas, or sulphur lease shall not preclude the issuance of a lease(s) for other OCS minerals in the same area. However, no OCS mineral lease shall authorize or permit the lessee thereunder to unreasonably interfere with or endanger operations under an

existing OCS mineral, oil and gas, or sulphur lease.

§ 281.10 Jurisdictional controversies.

In the event of a controversy between the United States and a State as to whether certain lands are subject to Federal or State jurisdiction (43 U.S.C. 1336), either the Governor or the Secretary may initiate negotiations in an attempt to settle the jurisdictional controversy. With the concurrence of the Attorney General, the Secretary may enter into an agreement with a State with respect to OCS mineral activities under the Act or under State authority and to payment and impounding of rents, royalties, and other sums; and with respect to the offering of lands for lease pending settlement of the controversy.

Subpart B—Leasing Procedures

§ 281.11 Request for a lease sale and submission of information.

(a) Any person may at any time request that OCS minerals other than oil, gas, and sulphur be offered for lease. A request that OCS minerals be offered for lease shall be submitted to the Director and shall contain the following information:

- (1) The area to be offered for lease.
- (2) The OCS minerals of primary interest.
- (3) The available OCS mineral resource and/or environmental information pertaining to the area of interest to be offered for lease which supports the request.
- (b) Within 45 days after receipt of a request submitted under paragraph (a) of this section, the Director shall either initiate steps leading to the offer of OCS minerals for lease and notify the applicant of the action taken or inform the applicant of the reasons for not initiating steps leading to the offer of OCS minerals for lease.

(c) Any interested party may at any time submit information to the Director concerning the scheduling of proposed lease sales for OCS minerals in any area of the OCS. Such information may include but not be limited to any of the following:

- (1) Benefits of conducting a lease sale in an area.
- (2) Costs of conducting a lease sale in an area.
- (3) Geophysical hazards which could be encountered in an area.
- (4) Geological information about an area.
- (5) Environmental information about an area.

(6) Information about known archaeological properties in an area.

§ 281.12 Request for OCS mineral information and interests.

(a) When considering whether to offer OCS minerals for lease, the Secretary may request indications of interest in the leasing of a specific OCS mineral, a group of OCS minerals, or all OCS minerals in the area to be offered for lease. Requests for information and interest shall be published in the *Federal Register* and may be published elsewhere.

(b) States and local governments, industry, other Federal Agencies, and all interested parties (including the public) are invited to respond to a request for information and interest. All information provided to the Secretary will be considered in the decision whether to proceed with additional steps leading to the offering of OCS minerals for lease.

(c) The Secretary may request specific information concerning the offering of a specific OCS mineral, a group of OCS minerals, or all OCS minerals in a broad area for lease or the offering of one or more specified tracts which represent a minable orebody. The Secretary's request may ask for comments on OCS areas which have been determined to warrant special consideration and analysis. Requests may be for comments concerning geological conditions or historic properties on the seabed; multiple uses of the area proposed for leasing, including navigation, recreation and fisheries; and other socioeconomic, biological, and environmental information relating to the area proposed for leasing.

§ 281.13 Joint State/Federal Coordination.

(a) The Secretary may invite the adjacent State Governor(s) to join in, or the adjacent State Governor(s) may request that the Secretary join in the establishment of a State/Federal task force or some other joint planning or coordination arrangement when industry interest exists for OCS mineral leasing or geological information appears to support the leasing of OCS minerals in specific areas. Joint State/Federal task forces or other arrangements will afford adjacent States opportunities for access to available data and information about the area; knowledge of progress made in the leasing process and of the results of subsequent exploration and development activities; facilitate the resolution of issues of mutual interest; and provide a mechanism for planning, coordination, consultation, and other activities which the Secretary and the

Governor may identify as contributing to the leasing process.

(b) State/Federal task forces or other such arrangements are to be constituted pursuant to such terms and conditions (consistent with Federal law and these regulations) as the Secretary and the Governor of an adjacent State(s) may agree.

(c) State/Federal task forces or other such arrangements will provide a forum which the Secretary and Governor may use for planning, consultation, and coordination on concerns associated with the offering of OCS minerals other than oil, gas, or sulphur for lease.

(d) With respect to the activities authorized under these regulations, each State/Federal task force or other such arrangement may make recommendations to the Secretary and Governor of an adjacent State concerning:

(1) The identification of areas in which OCS minerals might be offered for lease;

(2) The potential for conflicts between the exploration and development of OCS mineral resources, other users and uses of the area, and means for resolution or mitigation of these conflicts;

(3) The economic feasibility of developing OCS mineral resources in the area proposed for leasing;

(4) Potential environmental problems and measures that might be taken to mitigate these problems;

(5) Development of technical guidelines and procedures for safe, environmentally responsible exploration and development practices; and

(6) Other issues of concern to the Secretary and Governor of the adjacent States.

(e) State/Federal task forces or other such arrangements might also be used to conduct or oversee research, studies, or reports (e.g., Environmental Impact Statements).

§ 281.14 OCS mining area identification.

The Secretary, after considering the available OCS mineral resources and environmental data and information, the recommendation of joint State/Federal task forces, if any, and the comments received from interested parties, shall select the tracts to be considered for offering for lease in the leasing notice.

§ 281.15 Tract size.

The size of the tracts to be offered for lease shall be as specified in the leasing notice. The tracts offered for lease may include all or a portion of a block, two or more blocks, or portions of two or more blocks. It is intended that tracts offered for lease be sufficiently large to

include potentially minable OCS mineral orebodies. When the presence of any minable orebody is unknown and additional prospecting is needed to discover and delineate OCS minerals, the size of tracts specified in the leasing notice may be substantially larger.

§ 281.16 Proposed leasing notice.

(a) Prior to offering OCS minerals in an area for lease, the Director shall assess the available information to determine lease sale procedures to be prescribed and to develop a proposed leasing notice which sets out the proposed primary term of the OCS mineral leases to be offered; special lease stipulations; and such rental, royalty, and other terms and conditions as the Secretary may prescribe in the leasing notice. Lease stipulations, terms, and conditions may include measures to mitigate potentially adverse impacts on the environment.

(b) The proposed leasing notice shall be sent to the Governor(s) of any adjacent State(s), and a Notice of its availability shall be published in the *Federal Register* at least 60 days prior to the publication of the leasing notice.

(c) Written comments of the Governor(s) submitted within 60 days after publication of the Notice of availability of the proposed leasing notice shall be considered by the Secretary.

(d) Prior to publication of the leasing notice, the Secretary shall respond in writing to the comments of the Governor of the adjacent State(s) stating the reasons for accepting or rejecting the Governor's recommendations, or for implementing any alternative mutually acceptable approach identified in consultation with the Governor(s) as a means to provide a reasonable balance between the national interest and the well-being of the citizens of the affected State.

§ 281.17 Leasing notice.

(a) The Director shall publish the leasing notice in the *Federal Register* at least 30 days prior to the date that OCS minerals will be offered for lease. The leasing notice shall state whether oral or sealed bids or a combination thereof will be used, the place, date, and time at which sealed bids shall be filed, and the place, date, and time at which sealed bids shall be opened and/or oral bids received. The leasing notice shall contain or reference a description of the tract(s) to be offered for lease; specify the mineral(s) to be offered for lease (if less than all OCS minerals other than oil, gas, and sulphur are being offered); specify the period of time the primary

term of the lease shall cover; and any special stipulation(s), term(s), and condition(s) of the offer to lease.

(b) The leasing notice shall contain a reference to the OCS minerals lease form which shall be issued to successful bidders.

(c) The leasing notice shall specify the terms and conditions governing the payment of the winning bid.

§ 281.18 Bidding system.

(a) The OCS minerals other than oil, gas, and sulphur shall be offered by competitive, cash bonus bidding under terms and conditions specified in the leasing notice and in accordance with all applicable laws and regulations.

(b)(1) When the leasing notice specifies the use of sealed bids, such bids received in response to the leasing notice shall be opened at the place, date, and time specified in the leasing notice. The opening of bids is the sole purpose of publicly announcing and recording the bids received, and no bids shall be accepted or rejected at that time.

(2) The Secretary reserves the right to reject any and all sealed bids received for any tract, regardless of the amount offered.

(3) In the event the highest bids are tied bids when using sealed bidding procedures, the tied bidders may be permitted to submit oral bids to determine the highest cash bonus bidder.

(c) When the leasing notice specifies the use of oral bids, oral bids shall be received at the place, time, and date and in accordance with the procedures specified in the leasing notice.

§ 281.19 Lease term.

An OCS mineral lease for OCS minerals other than sand and gravel shall be for a primary term of not less than 20 years as stipulated in the leasing notice. An OCS mineral lease for sand and gravel shall be for a primary term of 10 years unless otherwise stipulated in the leasing notice. The lease will continue beyond the specified primary term for so long thereafter as leased OCS minerals are being produced in accordance with an approved mining operation or the lessee is otherwise in compliance with provisions of the lease and the regulations in this chapter under which a lessee can earn continuance of the OCS mineral lease in effect.

§ 281.20 Award of leases.

(a)(1) The decision of the Secretary on bids shall be the final action of the Department with respect to such bids, subject only to reconsideration by the Secretary, pursuant to a written request within 15 days after the Secretary's

decision, of the rejection of the high bid. The delegation of review authority to the Office of Hearings and Appeals shall not be applicable to decisions on high bids for leases in the OCS.

(2) Any bidder whose bid is rejected by the Secretary may file a written request for reconsideration with the Secretary within 15 days of rejection, accompanied by a statement of reasons. The Secretary shall respond in writing either affirming or reversing the decision.

(b) Written notice of the Secretary's action in accepting or rejecting bids shall be transmitted promptly to those bidders whose deposits have been held. If a bid is accepted, such notice shall transmit three copies of the lease form to the successful bidder. As provided in § 281.26 of this part, the bidder shall, not later than the 10th business day after receipt of the lease, execute the lease and pay the balance of the bonus bid. Deposits shall be refunded on high bids subsequently rejected.

(c) If the successful bidder fails to execute the lease within the prescribed time or to otherwise comply with the applicable regulations, the successful bidder's deposit shall be forfeited and disposed of in the same manner as other receipts under the Act.

(d) If, before the lease is executed on behalf of the United States, the land which would be subject to the lease is withdrawn or restricted from leasing, the deposit shall be refunded.

§ 281.21 Lease form.

The OCS mineral leases shall be issued on the lease form prescribed by the Secretary in the leasing notice.

§ 281.22 Effective date of leases.

Leases issued under the regulations in this part shall be dated and become effective as of the first day of the month following the date leases are signed on behalf of the lessor except that, upon written request, a lease may be dated and become effective as of the first day of the month within which it is signed on behalf of the lessor.

Subpart C—Financial Considerations

§ 281.26 Payments.

(a) For sealed bids, a bonus bid deposit of a specified percentage of the total amount bid is required to be submitted with the bid and must be delivered to the official designated in the leasing notice. The percentage of bonus bid required to be deposited will be specified in the leasing notice. The remittance may be made in cash or by Federal Reserve check, commercial check, bank draft, money order, certified

check, or cashier's check made payable to "Department of the Interior—MMS." Payment of this portion of the bonus bid may not be made by Electronic Funds Transfer.

(b) For oral bids, a bonus bid deposit of a specified percentage of the total amount bid must be delivered to the official designated in the leasing notice following the completion of the oral bidding. The percentage of bonus bid required to be deposited will be specified in the leasing notice. Payment of this portion of the bonus bid shall be made by Electronic Fund Transfer within the timeframe specified in the leasing notice.

(c) The deposit received from high bidders will be placed in a Treasury account pending acceptance or rejection of the bid. Other bids submitted under paragraph (a) of this section will be returned to the bidders. If the high bid is subsequently rejected, an amount equal to that deposited with the high bid will be returned according to applicable regulations.

(d) The balance of the winning bonus bid and all rentals and royalties must be paid in accordance with the terms and conditions of the leasing notice and Subchapter A of this chapter.

(e) For each lease issued pursuant to this subpart, there shall be one party identified per lease who shall be solely responsible for all payments due and payable under the provisions of the lease. The single responsible party shall be designated as the payor for the lease and shall be so identified on the Solid Minerals Payor Information Form (MMS-4030) in accordance with § 210.201 of this title. The designated party shall be responsible for all bonus, rental, and royalty payments.

(f) All payors must submit payments and payment information forms and maintain auditable records in accordance with the following Royalty Management regulations:

- Section 202.52—Royalties.
- Section 202.53—Minimum royalty.
- Section 206.150—Value basis for computing royalties.
- Section 210.200—Required recordkeeping.
- Section 210.201—Solid minerals payor information form.
- Section 210.202—Report of sales and royalty remittance—solid minerals.
- Section 210.203—Special forms and reports.
- Section 212.200—Maintenance of and access to records.
- Section 217.250—Audits.
- Section 218.40—Assessments for incorrect or late reports and failure to report.
- Section 218.50—Timing of payment.
- Section 218.51—Method of payment.
- Section 218.52—Designated payor.
- Section 218.56—Definitions.

Section 218.150—Royalties, net profit shares, and rental payments.

Section 218.151—Rentals.

Section 218.155—Method of payment.

Section 218.202—Late payment or underpayment charges.

Section 241.20—Civil penalties authorized by statutes other than the Federal Oil and Gas Royalty Management Act of 1982.

§ 281.27 Annual rental.

(a) The annual lease rental shall be due and payable in accordance with the provisions of this section. No rental shall be due or payable under a lease commencing with the first lease anniversary date following the commencement of royalty payments on leasehold production.

(b) Unless otherwise specified in the leasing notice and subsequently issued lease, no annual rental payment shall be due during the first 5 years in the life of a lease.

(c) The lessee shall pay an annual rental in the amount specified in the leasing notice and subsequently issued lease not later than the last day prior to the commencement of the rental year.

(d) A rental adjustment schedule and amount may be specified in a leasing notice and subsequently issued lease when a variance is warranted by geologic, geographic, technical or economic conditions.

§ 281.28 Royalty.

(a) The royalty due the lessor on OCS minerals produced (i.e., saved, renewed, or sold) from a lease shall be set out in a separate schedule attached to and made a part of each lease and shall be as specified in the leasing notice. The royalty due on production shall be based on a percentage of the value of the OCS minerals produced, a sum assessed per unit of product, or other such method as the Secretary may prescribe in the leasing notice. When the royalty specified is a sum assessed per unit of product, the amount of the royalty shall be subject to an annual adjustment based on changes in the appropriate price index, when specified in the leasing notice.

(b) When prescribed in the leasing notice and subsequently issued lease, royalty shall not be due on OCS minerals produced from a leasehold for up to any 5 years, as specified by the lessee, during the 1st through 10th years in the life of the lease.

§ 281.29 Royalty valuation.

The method of valuing the product from a leasehold shall be in accordance with procedures prescribed in the leasing notice and subsequently issued lease.

§ 281.30 Minimum royalty.

Unless otherwise specified in the leasing notice, each lease issued pursuant to the regulations in this part shall require the payment of a specified minimum annual royalty beginning with the year in which OCS minerals are produced (saved, removed, and sold) from the leasehold. Minimum royalty payments shall be offset by royalty paid on production during the lease year. Minimum royalty payments are due at the beginning of the lease year and payable within 30 days following the end of the lease year for which they are due.

§ 281.31 Overriding royalties.

(a) Subject to the approval of the Secretary, an overriding royalty interest may be created by an assignment. The Secretary may deny approval of an assignment which creates an overriding royalty on a lease whenever that action is determined to be in the interest of conservation, necessary to prevent premature abandonment of a producing mine, or to make possible the mining of economically marginal or low-grade ore deposits. In any case, the total of applicable overriding royalties may not exceed 2.5 percent or one-half the base royalty due the Federal Government, whichever is less.

(b) No transfer or agreement may be made which creates an overriding royalty interest unless the owner of that interest files an agreement in writing that such interest is subject to the limitations provided in § 281.30 of this part, paragraph (a) of this section, and § 281.32 of this part.

§ 281.32 Waiver, suspension, or reduction of rental, minimum royalty or production royalty.

(a) The Secretary may waive, suspend, or reduce the rental, minimum royalty, and/or production royalty prescribed in a lease for a specified time period when the Secretary determines that it is in the national interest, it will result in the conservation of natural resources of the OCS, it will promote development, or the mine cannot be successfully operated under present conditions.

(b) An application for waiver, suspension, or reduction of rental, minimum royalty, or production royalty under paragraph (a) of this section shall be filed in duplicate with the Director. The application shall contain the serial number(s) of the lease(s), the name of the lessee(s) of record, and the operator(s) or sublessee(s), if applicable. The application shall either—

(1)(i) Show the location and extent of all mining operations and a tabulated

statement of the minerals mined and subject to royalty for each of the last 12 months immediately prior to filing the application;

(ii) Contain a detailed statement of expenses and costs of operating the lease, the income from the sale of any leased products, and the amount of all overriding royalties and payments out of production paid to others than the United States; and

(iii) All facts showing whether or not the mines can be successfully operated under the royalty or rental fixed in the lease; or

(2) If no production has occurred from the lease, show that the lease cannot be successfully operated under the rental, royalty, and other conditions specified in the lease.

(c) The applicant for a waiver, suspension, or reduction under this section shall file documentation that the lessee and the royalty holders agree to a reduction of all other royalties from the lease so that the aggregate of all other royalties does not exceed one-half the amount of the reduced royalties that would be paid to the United States.

§ 281.33 Bonds and bonding requirements.

Prior to the commencement of any activity on a lease(s), the lessee shall be required to submit a surety or personal bond as described in § 282.40 of this title. Prior to the approval of a Delineation, Testing, or Mining Plan, the bond amount shall be adjusted, if appropriate, to cover the operations and activities described in the proposed plan.

Subpart D—Assignments

§ 281.40 Assignment of leases or interests therein.

(a) Subject to the approval of the Secretary, a lease may be assigned, in whole or in part, to anyone qualified to hold a lease.

(b) Any approved assignment shall be deemed to be effective on the first day of the lease month following the date that it is submitted to the Director for approval unless the parties request that an earlier effective date be specified in the Director's approval.

(c) The assignee shall be liable for all outstanding obligations under the lease and subsequent to the effective date of an assignment shall comply with all terms and conditions of the lease and applicable regulations issued under the Act.

§ 281.41 Requirement for filing for transfers.

(a) Where an assignment creates separate leases, a bond shall be furnished for each of the resulting leases in the amount prescribed in § 282.40 of this title. Where an assignment does not create separate leases, the assignee, if the assignment so provides and the surety consents, may become a joint principal on the bond with the assignor.

(b) An heir or devisee of a deceased holder of a lease or any interest therein shall be recognized as the lawful successor to such lease or interest if evidence of status as an heir or devisee is furnished in the form of—

(1) A certified copy of an appropriate order or decree of the court having jurisdiction over the distribution of the estate, or

(2) If no court action is necessary, the statements of two disinterested parties having knowledge of the fact or a certified copy of the will.

(c) The heirs or devisees shall file statements that they are the persons named as successors to the estate with evidence of their qualifications to hold such lease or interest therein.

(d) In the event an heir or devisee is unable to qualify to hold the lease or interest, the heir or devisee shall be recognized as the lawful successor of the deceased and be entitled to hold the lease for a period not to exceed 2 years from the date of death of the predecessor in interest.

(e) Each obligation under any lease and under the regulations in this part shall inure to the heirs, executors, administrators, successors, or assignees of the lease.

§ 281.42 Effect of assignment on particular lease.

(a) When an assignment is made of all the record title to a portion of the acreage in a lease, the assigned and retained portions of the lease area become segregated into separate and distinct leases. In such a case, the assignee becomes a lessee of the Government as to the segregated tract that is the subject of the assignment and is bound by the terms of the lease as though the lease had been obtained from the United States in the assignee's own name, and the assignment, after its approval, shall be the basis of a new record. Royalty, minimum royalty, and annual rental provisions of the lease shall apply separately to each segregated portion.

(b) Each lease of an OCS mineral created by the segregation of a lease under paragraph (a) of this section shall continue in full force and effect for the remainder of the primary term of the

original lease and so long thereafter as minerals are produced from the portion of the lease created by segregation in accordance with operations approved by the Director or the lessee is otherwise in compliance with provisions of the lease or regulations for earning the continuation of the lease in effect.

§ 281.43 Effect of suspensions on lease term.

(a) If the Director orders the suspension of either operations or production, or both, with respect to any lease in its primary term, the primary term of the lease shall be extended by a period of time equivalent to the period of the directed suspension.

(b) If the Director orders or approves the suspension of either operations or production, or both, with respect to any lease that is in force beyond its primary term, the term of the lease shall not be deemed to expire so long as the suspension remains in effect.

Subpart E—Termination of Leases**§ 281.46 Relinquishment of leases or parts of leases.**

(a) A lease or any part thereof may be surrendered by the record title holder by filing a written relinquishment with the Director. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and the surety to:

(1) make all payments due, including any accrued rentals and royalties; and
(2) abandon all operations, remove all facilities, and clear the land to be relinquished to the satisfaction of the Director.

(b) Upon relinquishment of a lease, the data and information acquired on the lease will no longer be held confidential and will be available to the public.

§ 281.47 Cancellation of leases.

(a) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act, and the default continues for a period of 30 days after mailing of notice by registered or certified letter to the lease owner at the owner's record post office address, the Secretary may cancel the lease pursuant to section 5(c) of the Act, and the lessee shall not be entitled to compensation. Any such cancellation is subject to judicial review as provided by section 23(b) of the Act.

(b) Whenever the owner of any producing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act, the Secretary may cancel the lease only after judicial proceedings pursuant to

section 5(d) of the Act, and the lessee shall not be entitled to compensation.

(c) Any lease issued under the Act, whether producing or not, may be canceled by the Secretary upon proof that it was obtained by fraud or misrepresentation and after notice and opportunity to be heard has been afforded to the lessee.

(d) The Secretary may cancel a lease in accordance with the following:

(1) Cancellation may occur at any time if the Secretary determines after a hearing that—

(i) Continued activity pursuant to such lease would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of cancellation outweigh the advantages of continuing such lease in force.

(2) Cancellation shall not occur unless and until operations under such lease shall have been under suspension or temporary prohibition by the Secretary, with due extension of any lease term continuously for a period of 5 years, or for a lesser period upon request of the lessee;

(3) Cancellation shall entitle the lessee to receive such compensation as is shown to the Secretary as being equal to the lesser of—

(i) The fair value of the canceled rights as the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, and all other costs reasonably anticipated on the lease, or

(ii) The excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement), except that (a) with respect to leases issued before September 18, 1978, such compensation shall be equal to the amount specified in paragraph (d)(3)(i) of this section; and (b) in the case of joint leases which are

canceled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for such loss from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question.

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Department of the Interior

30 CFR Part 282

Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulphur; Proposed Rule

DEPARTMENT OF THE INTERIOR
Minerals Management Service

30 CFR Part 282

Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulphur

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule would establish a separate set of general regulations designed to govern postlease discovery, delineation, development, and production of minerals other than oil, gas, and sulphur within the Outer Continental Shelf (OCS) of the United States. The proposed rule recognizes the special circumstances, issues, and requirements associated with those OCS minerals. It establishes practices and procedures for wise management of OCS resources, allowing balanced orderly postlease discovery, delineation, development, and production of minerals other than oil, gas, and sulphur, while protecting the human, marine, and coastal environments; preserving and maintaining free enterprise competition; and minimizing or eliminating conflicts between OCS mineral activities and other users and uses of the OCS. Specific requirements applicable to the specific mineral resources that are to be offered for lease would be included in the leasing notice at the time tracts on the OCS are offered for lease. The rule would be the third and final in a series of rules implementing a comprehensive leasing and regulatory program for OCS minerals other than oil, gas, and sulphur.

DATE: Comments must be hand delivered or postmarked no later than October 3, 1988.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive, Mail Stop 646, Reston, Virginia 22091; Attention: Gerald D. Rhodes, telephone (703) 648-7816, (FTS) 959-7816.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella; Branch of Rules, Orders, and Standards; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; telephone (703) 648-7816, (FTS) 959-7816.

SUPPLEMENTARY INFORMATION:

Synopsis

The Minerals Management Service (MMS) is establishing a separate regulatory regime governing activities associated with prelease prospecting, leasing, and operating activities

associated with production of minerals other than oil, gas, and sulphur. The new regulations are designed in recognition of the differences between the OCS activities associated with the discovery, development, and production of oil, gas, and sulphur and those associated with minerals other than oil, gas, and sulphur. These regulations address issues identified by MMS as well as issues raised by representatives of industry (potential OCS mineral lessees), other Federal Agencies, State and local governments, and the public. To accomplish this goal, it was felt that the new regulatory regime should be designed to do the following:

- (1) Recognize the special circumstances, issues, and requirements associated with the discovery, development, and production of OCS minerals other than oil, gas, and sulphur;
- (2) Assure that States, and through the States local governments, which are directly affected by OCS mineral mining activities are provided an opportunity for consultation and coordination on policy and planning decisions relating to the management of OCS resources;
- (3) Avoid or minimize conflicts between OCS mineral mining activities and other users and uses of OCS resources;
- (4) Balance orderly mineral resource development with protection of the human, marine, and coastal environments;
- (5) Insure the public a fair and equitable return on the resources of the OCS;
- (6) Preserve and maintain free enterprise competition;
- (7) Encourage development of new and improved technology for producing OCS mineral resources other than oil, gas, and sulphur which will avoid or minimize risk of damage to the human, marine, and coastal environments; and
- (8) Establish practices and procedures for postlease mineral activities and wise management of the natural resources of the OCS.

This proposed rule is designed to govern postlease activities to discover, develop, produce, and process OCS minerals other than oil, gas, and sulphur.

A final rule is to be published as the first part of the regulatory regime to govern OCS mineral mining activities. It establishes practices and procedures specific to prelease activities associated with geological and geophysical (G&G) exploration and scientific research for OCS minerals other than oil, gas, and sulphur. Regulations are also being proposed to govern the leasing of such OCS minerals.

Background

On September 28, 1945, the United States declared its jurisdiction over the natural resources of the continental shelf with the Truman Proclamation, "Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed on the Continental Shelf." At the same time, President Truman placed these natural resources under the jurisdiction of the Secretary of the Interior (Secretary) by Executive Order pending enactment of legislation. Congress passed the OCS Lands Act (OCSLA) in 1953 and delegated the administration of the OCS mineral resources of the United States to the Department of the Interior (DOI), giving legislative expression to the Truman Proclamation. Section 8(k) of the OCSLA provides specific legal authority for leasing minerals other than oil, gas, and sulphur in the OCS. Used in conjunction with other applicable sections of the OCSLA and other laws, this authority provides the Secretary with adequate flexibility and guidelines to administer an OCS minerals mining program.

This proposed rule is an action within the statutory authority of DOI and is intended to promote and encourage private enterprise in the development of economically sound and stable domestic materials industries in the United States which provides the appropriate level of protection for the human, marine, and coastal environments.

Under the National Materials and Minerals Policy, Research, and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the President is " * * * to encourage Federal agencies to facilitate availability of domestic resources to meet critical needs." The statute further mandates that the President direct " * * * the Secretary of the Interior to act immediately within the Department's statutory authority to attain the goals contained in section 21a of this title " * * *." Section 21a of the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) provides as follows:

The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, [and] (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, " * * *."

President Reagan reemphasized these themes in April 1982 by stating in the National Minerals and Materials Program Plan that this country will seek

to reduce its dependence on imported minerals by eliminating barriers to the development of marine mineral resources. The MMS believes that issuance of comprehensive regulations for the guidance of activities associated with OCS mineral discovery, development, and production which recognizes the need for protection of the environment and avoidance of unnecessary conflicts with other users of the oceans is in full accord with Federal policies. Implementation of the proposed rule is appropriate in view of the resource potential in areas of U.S. jurisdiction and the long lead times projected for development of certain OCS minerals other than oil, gas, and sulphur.

The lack of comprehensive regulations applicable to the discovery, delineation,

development, and production of minerals other than oil, gas, and sulphur from the OCS may have inhibited interest in development of a domestic marine mining industry. This has not been the case in Europe and Asia where vigorous marine mining industries have developed with government regulation. This proposed rule is intended to dispel uncertainty and demonstrate governmental commitment to OCS minerals development and production. Regulations in 30 CFR Parts 251 and 256 are presently applicable to prelease G&G exploration and scientific research activities and to the leasing of all OCS minerals. However, those existing regulations were designed primarily for oil and gas and to a lesser degree sulphur, and MMS believes that there is a need for regulations which are more

specifically designed for use with OCS minerals other than oil, gas, and sulphur. For such minerals, leasing and operating criteria with respect to lease size, lease terms, life of a lease, rentals, royalties, and operating conditions can be substantially different from those that are associated with oil, gas, and sulphur.

In the United States, industry interest in OCS mining has been focused on gold and other heavy mineral placers, strategic minerals, sand and gravel, and phosphorite. On March 11, 1988, the MMS published a Request for Comments and Nominations for a Lease Sale in Norton Sound in the *Federal Register* (53 FR 8134). Table 1 lists the permits that have been issued under existing regulations by MMS and its predecessor Agencies to allow prospecting for OCS minerals other than oil, gas, and sulphur.

TABLE 1.—GEOLOGICAL AND GEOPHYSICAL PERMITS ISSUED BY DOI TO PROSPECT FOR OCS MINERALS OTHER THAN OIL, GAS, AND SULPHUR

OCS region	Permittee	Minerals of interest	Year
Atlantic	Newport News Shipbuilding	Phosphate	1966
Pacific	Ocean Resources, Inc.	Phosphorite	1967
Do	Bear Creek Mining Co.	do	1967
Atlantic	Global Marine, Inc.	Sand and gravel	1969
Do	Ocean International, Inc.	Heavy minerals	1969
Pacific	Global Marine, Inc.	Sand and gravel	1969
Atlantic	Deepsea Ventures, Inc.	Manganese nodules	1970
Gulf of Mexico	Radcliff Materials, Inc.	Sand and gravel	1975
Alaska	Harding Lawson	do	1982
Do	Sohio	do	1982
Do	Tenneco	do	1982
Do	Geocubic	do	1983
Do	do	do	1983
Do ^a	Woodward	do	1983
Do	do	do	1983
Do	Sohio	do	1983
Do	Dames & Moore	do	1983
Do	do	do	1983
Do	Harding Lawson	do	1983
Do	do	do	1983
Do	do	do	1983
Do	McClelland	do	1983
Do ^a	do	do	1983
Do ^a	Harding Lawson	do	1984
Do	do	do	1984
Do	Ertec	do	1984
Do	Harding Lawson	do	1984
Do	do	do	1984
Do	MTS	do	1984
Do	Comap	do	1984
Do ^a	do	do	1984
Do	Sohio	do	1984
Do	do	do	1984
Do	Harding Lawson	do	1984
Do	Union	do	1984
Do	McClelland	do	1984
Do	do	do	1984
Do	Harding Lawson	do	1985
Do	do	do	1986
Atlantic ^a	E.I. Du Pont de Nemours & Company, Inc.	Heavy minerals	1986
Do ^b	Associated Minerals Co.	do	1986
Pacific	East-West Center	Cobalt-rich crusts	1986
Alaska ^a	Inspiration Gold, Inc.	Heavy minerals	1986
Atlantic	Geomarex	Carbonate sands	1987

^a No geological or geophysical data acquisition activities were initiated under these permits.

^b Two separate permits were issued, one for geological work and one for geophysical work.

Gold is being recovered from placer deposits in Alaska's State waters near Nome. Sand and gravel are being produced from Lake Erie and in Long Island Sound and New York Harbor in New York's and New Jersey's State waters. Interest has been expressed in acquiring prospecting permits for sand and gravel in Federal offshore waters.

Due to the growing interest in OCS minerals, MMS is working closely with the Bureau of Mines (BOM) to assess the economic feasibility on mining OCS minerals other than oil, gas, and sulphur. Two studies dealing with sand and gravel and heavy minerals were completed in early 1987. The studies are "An Economic Reconnaissance of Selected Sand and Gravel Deposits in the U.S. Exclusive Economic Zone," Open File Report 3-87, and "An Economic Reconnaissance of Selected Heavy Mineral Placer Deposits in the U.S. Exclusive Economic Zone," Open File Report 4-87. Both of these reports are available from the Bureau of Mines, Division of Minerals Availability, 2401 E Street, NW., Washington, DC 20241. Preliminary indications are that heavy mineral placers, sand and gravel, and precious metal placers in near-shore waters have the greatest potential for near term development. Other published studies on OCS minerals include the evaluation of cobalt-rich manganese crusts, polymetallic sulfides, and phosphorites.

The MMS is working closely with a number of coastal States through joint State/Federal task forces and other arrangements to study the engineering, economic, and environmental aspects associated with marine mining. A special working group with Alaska and 5 task forces have been established involving 9 coastal States: Hawaii; Oregon and California; Georgia; North Carolina; and Alabama, Louisiana, Mississippi, and Texas.

Most mineral activity on continental shelves is for sand and gravel for use as construction aggregate and fill. The most extensive marine sand mining occurs in Japan where approximately 1,000 small dredges produce 60 to 70 million tons of sand (and some gravel) annually for use in concrete as well as for fill. This is about one-fifth of all sand and gravel mined in Japan.

The other major sand and gravel mining area in the world is northern Europe, in the North Sea and English Channel, where about 100 dredges annually produce 40 to 50 million tons of sand and gravel, largely for use as concrete aggregate. The United Kingdom, the Netherlands, Denmark, and France have been the major producers. The United Kingdom obtains

an estimated 15 percent of its total concrete aggregate by marine mining.

Next to sand and gravel, the largest marine mining operations are for tin in Indonesia and Thailand where significant production results from seabed dredging and where continued exploration and development can be anticipated. In Thailand, large-scale marine tin mining operations account for half of that nation's production which totaled 37,000 metric tons (tin content) in 1986.

Phosphorite deposits also hold promise for development in the near term. One of the most promising prospects are the phosphorite deposits of the Chatham Rise east of New Zealand. A New Zealand company, Fletcher Challenge, has explored the deposits on the Chatham Rise in association with two West German firms, Preussag and Salzgitter. It has been reported that German mining engineers are designing mining equipment to recover these deposits which lie in 1,200 feet of water. Other prospective phosphorite deposits are located off the West Coast of Africa. These deposits have been under investigation by a French firm.

A major deep ocean project in the Red Sea now under consideration is the development of metalliferous muds containing zinc, copper, and silver in 6,500 feet of water. This project is now entering the pilot stage of production that will involve a 5-year investigation of mining and processing strategies. A Saudi/Sudanese joint commission is managing the project with technical assistance being provided by German and French firms.

Exploration activity for manganese nodules is also continuing, at a pace significantly reduced from the 1970's, in international waters in the Clarion-Clipperton fracture zone in the northeastern equatorial region of the Pacific Ocean.

The West German firm, Preussag, in cooperation with Japanese and U.S. firms, is also conducting detailed investigations of cobalt-rich manganese crusts in the Hawaiian Archipelago and Johnston Island Exclusive Economic Zone (EEZ) as well as other mid-Pacific areas. One or more Japanese firms have been exploring for polymetallic sulfides in the Pacific basin for the past 2 years and have now added cobalt-rich manganese crusts in mid-Pacific areas to their exploration objectives.

Minerals other than oil, gas, and sulphur in the OCS include over 80 different commodities, including a number of strategic minerals with limited domestic availability. Although OCS resource data are limited,

estimated quantities of minerals associated with cobalt-rich manganese crusts would appreciably increase the U.S. reserve base for strategic materials such as cobalt, nickel, and manganese. Existing world ore reserves of these minerals are adequate for the foreseeable future, but they are controlled by relatively few producer countries that could potentially have leverage over commodity prices.

The OCS deposits that have nearer term economic potential include heavy mineral placers containing gold, chromium, platinum-group minerals, tin, and titanium, as well as sand and gravel for construction material. Phosphorite crusts and nodules, as well as extensive bedded deposits off the U.S. east coast, are a potential future source of phosphate—now a major U.S. mineral export and an essential mineral import to many world agricultural regions.

The OCS polymetallic sulfide deposits containing zinc, copper, lead, silver, and other metals have long-term but little near-term potential as they pose new mining problems and must compete with a large number of alternative onshore domestic and foreign sources. Economic production from OCS deposits, as in onshore deposits, is ultimately dependent upon cost-competitive mining systems, ore grade, and commodity markets.

The MMS recognizes the potential for adverse environmental impacts as a result of OCS mineral activities. These possible impacts will be identified and appropriate mitigation measures determined as part of DOI's environmental review process. Some potential impacts that may be postulated now will never come to pass as experience provides added knowledge and modifies expectations and practices. Under DOI's case-by-case approach, issues common to all forms of OCS mining and all commodities will be covered by regulations governing G&G prospecting, scientific research, leasing, and operations. Using this case-by-case approach, mitigation measures can be defined with specificity as mineral resource targets are identified and recovery methods are proposed. Commodity-specific issues will be covered by specially designed lease stipulations specified at the time the OCS minerals are offered for lease. Site-specific issues identified after the issuance of a lease will be addressed through conditions of approval for the conduct of postlease operations. Based on this approach and information obtained as a result of MMS's Environmental Studies Program (ESP), MMS believes that protection of the

environment can be compatible with the recovery of minerals from the OCS.

The MMS has prepared OCS Report No. 87-0035, "Environmental Effects Overview: Marine Mining on the Outer Continental Shelf," to provide the public with an early overview of the likely mining activities and potential impacts on the environment resulting from OCS mining operations. The likely mining activities and their potential impacts will be covered in more detail in the environmental evaluations carried out as part of the decisionmaking process for all phases of OCS mining.

Detailed coverage of potential environmental issues is not practicable at this point since many uncertainties remain at this early stage with respect to the nature, magnitude, location, and rate of future mining. Many types of ore deposits exist in a variety of environmental settings requiring a diverse set of mining technologies. This raises questions whether a meaningful assessment can be conducted at this time. However, this regulatory program is designed to ensure that environmental evaluations will be prepared prior to approval of postlease operations.

Further, through the National Environmental Policy Act (NEPA) process, MMS's preparation of prelease environmental evaluations addressing proposals to lease commodities in identified areas will provide a series of

opportunities for public involvement in the evaluation of environmental impacts. It is anticipated that an Environmental Impact Statement (EIS) will be prepared in connection with the decision to hold the first lease sale in an area. The additional site-specific and technology-specific environmental evaluations which will be conducted with respect to proposed postlease operations will provide additional opportunities for public participation.

Two sale-specific EIS's have been completed or are in the process of completion. They are for (1) sand and gravel in the Beaufort Sea off Alaska published as a final EIS in March 1983, and (2) cobalt-rich manganese crusts in the Hawaii and Johnston Island EEZ's published as a draft EIS. The notice of availability for the Hawaii draft EIS was published in the *Federal Register* on March 27, 1987 (52 FR 9958), with public comments due by June 25, 1987. The comment period was subsequently reopened from December 10, 1987, until February 8, 1988. A draft EIS for metalliferous sulfides in the Gorda Ridge area off California and Oregon was published in December 1983. This EIS was cancelled in a *Federal Register* Notice dated March 31, 1988 (53 FR 10447). On March 11, 1988, the MMS published a Notice of Intent to Prepare an Environmental Impact Statement in the *Federal Register* (53 FR 8134) in

association with its requests for Comments and Nominations for a Lease Sale in Norton Sound. Lease sale EIS's such as these will be augmented by additional environmental documentation prior to the approval of postlease development and production operations.

Program History

Federal study of OSC mining began as an outgrowth of the concern with mineral shortages during and after World War II and the Korean Conflict. In the early 1950's, President Truman created the Paley Commission to investigate means to avoid shortages. This was followed by major studies by the National Academy of Sciences (NAS), the National Academy of Engineering (NAE), and others which further focused attention on the critical nature of steadily declining mineral resources in terms of U.S. and foreign supplies, U.S. vulnerability, and national goals.

During the period of 1958 through 1988, seven lease offerings were completed for salt, sulphur, and phosphate minerals using the regulations promulgated under the OCSLA as a basis for the actions. Over \$54 million were received by the Federal Government in bonuses and rents during this period (see Table 2).

TABLE 2

GULF OF MEXICO SALT AND SULPHUR LEASE OFFERINGS

Lease offering	Date of offering	Location	No. of tracts offered	Acres offered	No. of tracts bid on	Total bonus high bid	No. of tracts leased	No. of bids rejected	No. of bids received
1	10/23/54	Sul-LA	108	523,630	5	\$1,233,500	5	0	5
8	5/19/60	Sa-LA	10	22,085	1	75,250	1	0	1
13	12/14/65	Sul-TX	658	957,520	50	33,740,309	50	0	113
17	9/05/67	Sa-LA	8	16,995	1	30,564	1	0	1
20	5/13/69	Sul-LA	120	165,605	38	3,678,045	4	34	43
S/S	2/24/88	Sul-CGOM	51	593,971	14	15,149,327	14	0	20
Totals			955	2,279,806	109	53,906,995	75	34	183

Total Amount of All Bids Received for All Lease Offerings—\$82,527,068.
Total Amount of All Rentals for All Lease Offerings—\$297,860.

PACIFIC PHOSPHATE LEASE OFFERING

Lease offering	Date of offering	Location	No. of tracts offered	Acres offered	No. of tracts bid on	Total bonus high bid	No. of tracts leased	No. of bids rejected	No. of bids received
PH	12/15/61	So-CA	16	80,640	6	\$122,000	6	0	6

Total Amount of All Bids Received—\$122,000.
(Total bonuses (and rentals) were refunded due to discovery of unexploded Naval projectiles on ocean floor.)

In its 1970 report to Congress, the Public Land Law Review Commission (Commission) concluded that the regulations associated with the OCSLA, designed primarily for oil and gas

development, were not conducive to the development of other minerals. The Commission also stated that a location system is not desirable and that competitive bidding procedures should

be utilized where competition is known to exist. The rules being proposed for the leasing of OCS minerals other than oil, gas, and sulphur are consistent with the Commission's report. The benefits of

leasing were reiterated in 1975 by the NAS/NAE Panel on Operational Safety in Marine Mining in its comprehensive report entitled "Mining in the Outer Continental Shelf and the Deep Ocean." This study examined basic issues including the importance and potential of OCS mining, mining technology, environmental protection and safety, regulations, and leasing. The panel recommended that operations be undertaken in representative areas.

Draft OCS hard minerals leasing and postlease operating regulations and a draft EIS were published in 1974. Following public comment, DOI undertook a series of actions culminating in the present policy of leasing on a case-by-case basis in consultation with adjacent States. A proposed long-range program for resource evaluation and lease management was drawn up by the U.S. Geological Survey (USGS) in 1974 but was not funded.

In November 1977, the Directors of the USGS and the Bureau of Land Management (BLM) recommended establishment of an inter-Agency task force to develop policy recommendations for leasing OCS minerals other than oil, gas, and sulphur. The resulting Program Feasibility Document, published in 1979 with 18 technical appendices, concluded that sufficient national interest and economic incentives existed to support selected commercial-scale mining in the OCS.

On January 19, 1982, DOI announced approval of the development of a leasing program for OCS minerals other than oil, gas, and sulphur on a case-by-case basis. The Secretary published a Notice of interpretation in the *Federal Register* on December 8, 1982 (47 FR 55313), relating to DOI's jurisdiction over minerals other than oil, gas, and sulphur. Further clarification was published on January 19, 1983 (48 FR 2450).

The case-by-case approach to the leasing of OCS minerals other than oil, gas, and sulphur was selected to provide practical experience with the variety of potentially reservable mineral resources found in the OCS, the different potential environmental settings, and the range of potential technology that might be used. The case-by-case approach provides for management flexibility, opportunity for effective coastal State participation, and comprehensive environmental review. The regulations will establish a broad regulatory framework; the subsequent lease stipulations will define site-, commodity-, and technology-specific requirements; and the appropriate public and environmental review of leasing proposals and proposed postlease

operations will facilitate the consultation and coordination processes authorized under Federal law.

On April 9, 1986, MMS published an advance Notice of proposed rulemaking for regulations to govern postlease operations (51 FR 12163). Responses to the advance Notice for postlease operations are summarized in the section on Public Comments and Agency Responses.

Regulation Organization

This proposed rule covers activities conducted on a lease for minerals other than oil, gas, and sulphur in the OCS. The rule is subdivided into five subparts. The vast majority of the provisions fall under two subparts, Subpart B, Jurisdiction and Responsibilities of Director, and Subpart C, Obligations and Responsibilities of Lessees. The remaining subparts are Subpart A, General; Subpart D, Payments; and Subpart E, Appeals. While many activities are covered by the provisions of a particular subpart, some activities are subject to provisions contained in more than one subpart. For example, suspensions of operations are addressed in both Subparts B and C, because they can either be directed by MMS or requested by a lessee.

The provisions which govern lessee obligations and responsibilities for activities to be carried out on a lease are covered in Subpart C. Basically, a lessee's activities will fall into one or more of three categories: Exploration, testing, or mining and processing. Activities must be conducted in accordance with an approved plan. No activity may be conducted that is not included in the description of activities under an approved plan. An exception is made for preliminary activities; i.e., those casual-entry activities which have little or no environmental impact and which are necessary to prepare a reasonable delineation, testing, or mining plan. Requirements for the safe conduct of mining activities and environmental protection and monitoring are also in Subpart C. To aid the lessee, reporting and recordkeeping requirements other than those associated with delineation, testing, and mining plans are given in § 282.31.

Discussion of Proposed Regulations

Provisions of the proposed rule are discussed below. The explanation given is designed to avoid confusion and provide clarification. Comments are specifically invited on the issues discussed.

Public Participation. Opportunities for public participation similar to those that are part of the prospecting and the

proposed leasing processes are also proposed for inclusion in the review, evaluation, and approval process for postlease activities. For example, a site-specific environmental evaluation will be made in association with the technical and environmental evaluation of activities proposed in delineation, testing, and mining plans. Members of the public who wish to review and comment on proposed plans may arrange for access to the nonproprietary portions of each plan while it is being evaluated by MMS. Where applicable, States will have additional review opportunities under the Coastal Zone Management Act.

Are there any other areas where opportunities for public participation should be provided?

Data and information to be made available to the public. The rule proposes that proprietary G&G interpretations, maps, and other data and information (including commercial and financial information) required to be submitted under the proposed rule will be protected from unauthorized release so long as the lease is held on the lands involved. The proposed provision to protect proprietary data and information from unauthorized disclosure for the duration of the lease parallels the protection that is provided for data and information submitted under onshore mineral leases for minerals other than oil, gas, and sulphur. This proposal is based upon the view that during the development phase of an offshore mineral industry proprietary data and information submitted by a lessee should be protected for at least as long as similar data and information would be protected under rules governing onshore mineral leases.

The MMS bases the determination that particular data or information are proprietary on several criteria. Should these rules detail the categories to be considered proprietary, and if so, what should the categories be?

Mining units. It is anticipated that leases for minerals other than oil, gas, and sulphur will cover an area that embraces one or more economically minable orebodies. Section 282.11(d) provides for the formation of mining units in order that orebodies which underlie portions of more than one lease may be mined in the most efficient and economical manner. Operations on any lease included in the mining unit will be considered as operations on each of the leases within the mining unit and will keep each of those leases in force even if there is no production from an individual lease. Minimum royalties paid on any Federal lease in the unit can

be credited against the royalties due on production under any Federal lease in the unit. Leases on disputed lands and State leases may be included in mining units in accordance with agreements between the Governor and the Secretary, pursuant to § 282.8. However, all payments due under State and Federal leases shall be accounted for separately.

Bonds. Section 282.40 provides for the submission of a surety or personal bond prior to the commencement of any activity on a leasehold. The purpose of the bond is to protect the Government's financial interest in the event a lessee fails to meet a royalty or other obligation under a lease.

Plans. Sections 282.21 through 282.27 require a lessee to submit and obtain the Director's approval for comprehensive delineation, testing, or mining plans, as appropriate, before significant activity can begin on a lease. The approval process may be iterative, requiring the lessee to resubmit the plans containing modified sections as necessary. Certain preliminary activities such as bathymetric and geophysical surveying which would not cause adverse environmental impacts are exempt from prior approval; however, the Director must be notified at least 30 days in advance of the initiation of preliminary activities. These activities may be necessary to supplement information developed through prelease prospecting activities in order to better identify site-specific exploration targets. Delineation, testing, and mining plans must describe in detail the activities to be conducted including exploration, mining, mineral processing methods and rates, transportation corridors, equipment, time periods, locations, and the nature and degree of any potential environmental impacts of the activities proposed. Sufficient information must be provided so that the Director will have a basis on which to make informed judgments with respect to the plan's proposed activities and MMS's responsibilities for natural resource conservation and protection of human life and the environment. Approvals of proposed activities described in a plan are contingent upon the results of MMS's technical and environmental evaluations of the lessee's ability to comply with the requirements of the lease and applicable laws and regulations while performing the activities described in the plan.

The need for plans governing exploration and testing activities will depend upon the availability of adequate data and information to develop a comprehensive mining plan.

As an example, it is anticipated that most sand and gravel operations will not need a delineation or testing plan. Knowledge of the deposit and the existence of tested mining methods could allow a lessee to submit a mining plan without conducting postlease exploration or testing activities. The testing plan provides for an interim phase during which extraction technologies and equipment can be evaluated and operating experience developed. Once sufficient information is available, the lessee may prepare and submit a mining plan. Plans are to include detailed descriptions for the abandonment of lease operations including cleanup actions.

When environmental data and information are insufficient to allow impact assessment, proposed plans must include descriptions of the lessee's comprehensive plans to monitor the environmental effects of proposed operations, including the time period to be covered and the scope of the proposed monitoring program. It is anticipated that there will be some degree of environmental monitoring described in each plan submitted for MMS approval. If sufficient information is not available, the Director may require incorporation of contingency measures into a lessee's proposed plan. The contingency measures will establish procedures that employees of the lessee are to follow in the event of any equipment or procedural failure that could threaten safety or seriously harm or damage the marine, coastal, or human environment.

Proposed changes in delineation, testing, and mining plans that reflect changed conditions, new data or information, oversights, etc., must be approved by the Director prior to the initiation of those changes.

Platforms. Provisions are included to require that installations and structures placed on the OCS are designed, fabricated, installed, used, inspected, and maintained in a manner that assures their structural integrity. In those cases where a platform or other structure is fixed or bottom founded, the lessee is required to comply with the requirements of Subpart I of 30 CFR Part 250 (published in the *Federal Register* on April 1, 1988 (53 FR 10739)) which govern the design, fabrication, and installation of OCS platforms and other bottom-founded structures. This approach utilizes an existing process for approving OCS installations and structures and for assuring the structural integrity of those facilities throughout their productive life. Subpart I sets out a two-tier system which requires third-

party verification and more extensive documentation when an installation or structure utilizes unique technologies. In those instances where operations will be conducted from floating platforms or vessels, there are a number of applicable U.S. Coast Guard (USCG) requirements that relate to navigational aids and the stationkeeping ability of the vessel.

Drilling. Drilling operations associated with OCS minerals exploration, testing, and mining will normally require many more drill holes of a smaller diameter to a shallower depth than is the case with oil and gas operations. For example, in the evaluation and development of a placer deposit of gold or cassiterite (tin oxide), drill holes generally will be less than 30 meters (m) deep and spaced as closely as 30 m apart. To evaluate such a deposit, containing 60 million m³ of ore for 20 years production, some 2,000 holes each perhaps 20 centimeter (cm) diameter and 25 m deep may be required. To develop a deposit of bedded phosphorite for slurry mining through boreholes, a similar spacing of 50 cm diameter holes to depths of several hundred meters may be required. To evaluate a massive sulfide deposit, several thousand small-diameter (less than 10 cm) drill holes may be required. In each case, the drilling technology used will be quite different and not interchangeable. Drilling for hard mineral resources generally will not be done in horizons that contain oil, gas, or geothermal resources, but where this might arise, appropriate safety measures will be required. Provision is made in the proposed rules for appropriate blowout prevention equipment to be installed and operated. The procedures required will be the same as those required under normal oil and gas operations in the OCS, found in Subpart D of 30 CFR Part 250 (published April 1, 1988 (53 FR 10714)). Special attention is also given to the protection of freshwater aquifers from contamination through procedures for approved penetration and sealing of aquifers.

Disposal of Waste. The MMS recognizes that various aspects of OCS mining operations associated with minerals other than oil, gas, and sulphur will require that the lessee dispose of waste generated by mining and processing activities.

Since the nature and extent of OCS mining activities will vary widely, MMS cannot accurately project the additional environmental requirements or safeguards which may be required. Under the proposed rule, delineation,

testing, and mining plans are to include a detailed description of the cycle of all materials, the method of discharge and disposal of waste and refuse, and their chemical and physical characteristics. The MMS's evaluation of each plan will address the proposed methods of waste disposal to assure that disposal will be conducted in an environmentally responsible manner. The lessee must then follow the approved plan.

In many cases, the disposal of waste material will be governed by regulations of Environmental Protection Agency (EPA) and other Federal Agencies. The lessee must comply with the applicable requirements of those Agencies. For example, discharge of material in the OCS may require compliance with appropriate EPA or U.S. Army Corps of Engineers (COE) regulations. The MMS believes that the provisions of the proposed rule in combination with the regulations of other Agencies are the best way to address disposal of waste generated by OCS mining activities.

Environmental Protection Measures.—(1) *Plans.* As discussed earlier, MMS has prepared a general environmental overview and anticipates more detailed coverage of environmental issues during sale-specific environmental evaluations. Thus, additional opportunities for public comment on environmental issues will be made available prior to issuance of an OCS lease for minerals other than oil, gas, and sulphur. The environmental protection measures provided in the proposed operating regulations are intended to supplement the special lease stipulations required as a result of environmental evaluations conducted prior to the lease sale.

Requiring that the lessee submit plans to MMS for approval prior to conducting operations on a lease will enable MMS to evaluate operators' plans at various times during OCS mining operations. At each stage of operation, the lessee will describe the activities to be performed, the potential environmental effects, and the mitigation measures to be implemented. The MMS will approve a plan only when appropriate environmental safeguards and adequate mitigation measures are contained in the plan. In addition, no changes can be made in the operations being conducted under an approved plan without the prior approval of MMS for the specific changes, including changes in environmental safeguards and mitigation measures.

(2) *Baseline data.* A reasonable knowledge of the lease area is a prerequisite to the determination of the potential environmental effects of proposed activities on a lease. Under the

proposed rule, the Director may require a lessee to collect additional data prior to approval of a planned activity. The Director may also require a lessee to monitor the approved activities for unanticipated environmental impacts in accordance with a monitoring plan (§ 282.28(b)). Some data needs are expected to be lease-specific.

The MMS expects that lessees will obtain and submit information on benthic communities and archaeological resources on the lease.

In those instances where additional information is needed, it is anticipated that the lessee will be asked to obtain and submit such information before a plan is approved.

(3) *Monitoring.* There are several objectives of monitoring, as specified in § 282.28(c)(1), but the most important is the need to ensure the early and accurate detection of environmental effects. This requirement is applicable not only to mining plans (§ 282.24) but to delineation plans (§ 282.22) and testing plans (§ 282.23) as well. The testing phase of activities should provide an excellent indication of short-term, lease-specific environmental effects. Monitoring of full-scale mining activities could still be required, even if no significant problems are detected during the test-mining phase. Monitoring during mining could also be required to verify predictions of the effects of scaling on equipment or the duration of operations and to test predictions of the environmental impacts of approved mining activities based upon test activities carried out on a reduced scale.

Monitoring requirements are expected to be more intensive during the early years of exploration, testing, and development of commercial-scale mining. As reliable data and information are collected and analyzed, the level of monitoring will be required so long as mining activities on the lease pose a threat to the environment. The MMS will utilize compliance inspectors to ensure that the approved mining and monitoring programs are being adhered to (§ 282.28(c)(3)).

The MMS is not including a generic list of parameters to be examined during monitoring in these regulations. The environmental evaluation prepared for a lease sale is expected to identify parameters of concern to the area offered for lease.

(4) *Technological Standards.* It is not possible at this stage to define specific economically feasible mining technologies as being the best available and safest technologies (BAST). Whenever failure of equipment would pose a serious threat to safety, health, or the environment, MMS's technical and

environmental review of a lessee's proposed delineation, testing, or mining plan will include consideration of whether the proposed activities represent BAST. Each plan submitted for MMS approval is to identify the alternative technologies considered and the reasons for not selecting an alternative technology.

(5) *Mitigation.* The MMS recognizes the potential for adverse environmental impacts and believes that mitigation is an important component of an environmentally sound mining program. The potential for a specific impact to occur will be assessed and, where appropriate, mitigation measures will be identified. Where appropriate, lease stipulations will be used to identify specific mitigation measures to avoid or minimize adverse impacts on the environment. Site-specific issues identified after the issuance of a lease will be addressed during the review and evaluation of activities described in a proposed delineation, testing, or mining plan. All plans submitted for approval will be required to include appropriate mitigation measures to avoid or minimize adverse impacts on the environment.

(6) *Contingency strategy.* It is in the lessee's best interest to ensure that its activities are carried out in accordance with its plan of operations. Thus, it is unlikely that operational failures which pose a threat of serious harm or damage to the marine, coastal, or human environment will occur. However, MMS recognizes that operational failures can happen, and that plans for taking corrective action should be in place when the technology being used and the sensitivities of the environmental settings involved require added assurances of environmental protection. The proposed rule recognizes the need for contingency plans in §§ 282.26 and 282.28. The MMS will assess the need for contingency plans during the environmental evaluation of a proposed lease sale and during the evaluation of individual plans.

(7) *Onshore.* The MMS has no direct authority relating to onshore activities associated with OCS mining. However, the MMS's environmental evaluation of a delineation, testing, or mining plan will include an assessment of the impacts of known onshore activities associated with OCS mining activities. For example, when OCS produced minerals are to be processed onshore, MMS will seek a joint environmental evaluation to satisfy the responsibilities of Federal and State agencies for the protection of the environment. The mechanisms for consultation and

coordination established by joint State/Federal task forces and other arrangements will facilitate the development of a joint evaluation of potential environmental impacts onshore. The lessee will be expected to consult with MMS as early as possible concerning the information it must submit to MMS regarding potential impacts of proposed mining and processing activities on the environment.

Consideration will also be given in the environmental evaluation of a plan when a lessee proposes to process minerals overseas in accordance with Executive Order 12114, which requires the environmental review of major Federal actions abroad. However, information on the socio-economic impacts of foreign processing is not required.

Reports and Records. Section 282.29 specifies the reports of postlease activities that are required and their contents and timeframes for submission. It also specifies which records are to be retained and for what period of time. The section provides that the Director may inspect or copy any of the records and may inspect or take cuts of any geological samples, cuttings, or cores that are taken from an OCS lease. These reports and records are necessary to enable MMS to assure that operations are being conducted in a safe and environmentally sound manner in accordance with an approved plan, to determine whether production is being properly measured and royalties properly paid, and to evaluate the economic potential of nearby tracts to identify areas to be offered at future lease sales.

The reports required to be submitted are:

(1) A monthly or quarterly report of production and environmental monitoring results. Submission of these reports is required beginning with the month that production begins and continuing until the lease terminates, unless the Director suspends the requirement during a suspension of production. The report shall contain the identity, quality, quantity, and value of each of the minerals produced, sold, or disposed of, and other information needed to verify royalty due the Federal Government.

Comments are requested on whether monthly or quarterly reports should be required.

(2) A quarterly report on the status of approved exploration and/or testing activities and the results of the environmental monitoring program. The report shall contain a listing of

exploration and/or testing activities conducted during the calendar quarter.

(3) A final report on approved exploration and/or testing activities and the results of the environmental monitoring program. This report requires more detailed information on the activities and is required to be submitted within 3 months after completion of activities.

Maps of leases showing areas of exploration, testing, and/or mining are to be kept up to date and the accuracy of maps certified by a professional engineer or land surveyor. Maps would be submitted to the Director annually or at such other times as may be prescribed.

Methods of Royalty Calculation. The MMS will follow its Royalty Management's regulations contained in 30 CFR Chapter II, Subchapter A, for product valuation and the collection of royalties.

Specific regulations have been included in the proposed leasing rules, 30 CFR Part 281. Comments are invited on the methods for establishing product value and the procedures for collecting royalties.

Public Comments and Agency Responses

The following discussion summarizes the comments received as a result of the requests for comments and recommendations contained in the advance notice of proposed rulemaking. Agency responses are also included.

Comment—Several commenters stated that the regulations are premature, the MMS should await new legislation, and that regulations should be prepared only after offshore mining is determined to be commercially feasible and the economics of specific types of minerals can be determined. Other commenters stated that regulations are needed and timely.

Response—The MMS does not agree that the regulations are premature, that it should await new legislation, or that regulations should be prepared only after OCS mining is determined to be commercially feasible. Section 8(k) of the OCSLA states, as follows:

The Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the Outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

Thus, section 8(k) specifically and clearly authorizes the Secretary to lease minerals in the OCS other than oil, gas,

and sulphur. Mining company representatives have stated on a number of occasions that without regulations in place they cannot accurately predict the economics of a mining operation nor can they raise capital for the venture unless the rules they will be working under are known. It is necessary that the regulations be in place in order that the mining industry and other interests have advance notice of the rules that will govern OCS mining activities.

Comment—Two commenters stated that the proposed regulations should follow the same framework as the oil and gas operating regulations.

Response—These proposed regulations follow the framework of regulations governing mineral activities on public lands onshore. The DOI has been regulating exploration, development, and production activities associated with minerals other than oil, gas, and sulphur for almost 70 years. The DOI recognizes that many of the operating requirements for those minerals are different from the requirements associated with oil, gas, and sulphur. The proposed rules are written in language that is familiar to the mining industry.

Comment—One commenter stated that consultation and coordination with States and other Federal Agencies should be done through MMS and that MMS should be involved in any negotiations with State authorities for onshore services and facilities needed by lessees.

Response—It is envisioned that State/Federal consultation and coordination activities will be continued from prior to the identification of areas of interest through and including abandonment of production activities. Opportunities are being provided for States and other Federal Agencies to review and provide comments and recommendations with respect to prospecting, leasing, exploration, testing, production, and abandonment proposals. However, it is not anticipated that MMS will be actively involved in the negotiations with adjacent State authorities for onshore facilities and services.

Comment—The MMS should be solely responsible for approving plans, abandonment of operations, and compliance on OCS leases.

Response—In the final analysis, the MMS will have primary responsibility for plan approval. That approval will be given after consultation with adjacent States and other Federal Agencies. Approval will be conditioned upon the lessee's compliance with applicable provisions of law and implementing regulations, for example, the National

Pollutant Discharge Elimination System (NPDES), as appropriate. The MMS will also exercise primary responsibility for approval of the lessee's proposed abandonment of operations, inspections to assure compliance, and other activities covered by these regulations. Other Federal Agencies such as the National Oceanic and Atmospheric Administration (NOAA), USCG, and EPA, which have authorities and responsibilities for offshore activities under the OCSLA or other legislation, will independently exercise those authorities and responsibilities.

Comment—One commenter states there should be no areawide sales similar to oil and gas.

Response—The MMS does not anticipate that areawide sales will be held. However, a number of tracts may be offered in order to obscure the identity of the tract or tracts of interest when a mining company has requested a lease offering. It is also anticipated that some lease offerings may offer relatively large tracts for lease. Such offerings would be designed to assure that the party who discovers an ore body earns leasehold rights to the discovered mineral.

Comment—Regulations should require that documents addressing environmental impacts specify, in detail, the mining process and the ore beneficiation process.

Response—The MMS will require that lessees submit mining plans which include sufficient detail in the descriptions of the proposed mining and ore beneficiation processes to enable MMS to verify the identity of any potential adverse environmental impacts that might result from the proposed mining and processing activities.

Comment—Regulations should describe EPA's permit-issuance process and information needs.

Response—Lessees operating under the proposed rule should be aware of the potential need to satisfy certain permit requirements of other Federal Agencies. In some instances, lessees may need to obtain an ocean dumping permit. However, it is not necessary or appropriate to include references to permit requirements of other Agencies in these regulations. The lessee is responsible for knowing and satisfying all applicable Federal, State, and local permit requirements.

Comment—An environmental report should be required with all postlease operating plans as for oil and gas.

Response—An applicant seeking permission to conduct activities authorized under the proposed rule will be required to submit environmental

data and information regarding the area of activity and potential impacts that may result from the proposed activity. The MMS will evaluate the proposed activities to assure that they are technically sound, properly mitigated, and environmentally responsible.

Comment—Regulations should specify under what conditions the Secretary could cancel a lease.

Response—The conditions under which the Secretary can cancel a lease are addressed in § 282.15 which repeats the provisions of the OCSLA.

Comment—The MMS should recognize the important economic and strategic potential of the east coast offshore heavy mineral deposits for supplying the U.S. titanium dioxide and titanium metals industries. Regulations should be structured so as to encourage, not discourage, exploration and development of titanium deposits.

Response—The MMS recognizes there is as yet no adequate substitute for titanium in aircraft, space, and missile applications and no cost-effective substitute for titanium dioxide pigment. The requirements of this proposed rule are designed to encourage the discovery, delineation, and production of minerals other than oil, gas, and sulphur in a manner that balances the national need for strategic minerals with appropriate protection of the environment.

Comment—The comment was made that regulations should specify the use of mining methods that will best serve to protect the marine environment. Another commenter suggested that regulations should be based on controlling impacts on the environment, rather than on specific methods. A third commenter proposed that state-of-the-art mining technology should be required to minimize environmental damage (e.g., the use of silt curtains during dredging to restrict the turbidity plume).

Response—Section 21(b) of the OCSLA requires the use of BAST in operations for all minerals in the OCS. Appropriate mitigation measures will be required whenever a proposed mining activity is expected to have an adverse impact on the environment. Required mitigation measures will normally be identified during the technical and environmental evaluations of a lessee's proposed plan. It will be the lessee's responsibility to demonstrate that the activities proposed in its delineation, testing, or mining plan constitute BAST. The plan will describe in detail the activities proposed by the lessee as well as any alternative sites and technologies considered by the lessee and why they were not chosen. A proposed plan would not be approved if the technical

and environmental evaluations by MMS indicate that the plan does not constitute BAST and that there are unsafe conditions or an undue threat of serious harm or damage to the marine, coastal, or human environment. The MMS does not intend to specify the mining practices and procedures to be used; however, it would not approve the use of unsafe practices. It is the lessee's responsibility to assure that the methods used are appropriate to the operations being conducted taking into account the need for safety, environmental protection, and resource conservation.

Comment—A commenter stated that proposed production methods should be compatible with geologic conditions.

Response—The technical and environmental evaluations of a proposed mining plan should determine if the mining method proposed constitutes BAST and is suitable for the geologic environment. If it is determined that the plan doesn't represent BAST or that the proposed activities are not compatible with geologic conditions, the plan would not be approved.

Comment—A commenter suggested that conservation of resources for the future should be of little concern.

Response—The MMS does not share this view. It is important to conserve the Nation's mineral resources and to avoid waste. Delineation, testing, and mining plans will be evaluated to ensure against wasteful practices and to assure the taking of reasonable actions for the conservation of resources whether leased or unleased.

Comment—Proposed changes to the sea floor should be described indicating anticipated extent and depth of excavation.

Response—The plan should contain a detailed description of proposed excavation activities which would include the extent and depth of all such activities. Actual excavation activities will be governed by the approved plan. A significant departure from the excavation activities described in an approved plan must be approved before the change is implemented.

Comment—Federal regulations should allow for the control of onshore environmental impacts to be handled by the appropriate State agencies.

Response—The environmental impacts of onshore activities will be subject to applicable Federal and State requirements. Onshore processing facilities for minerals mined from the OCS are under the jurisdiction and control of State and local governments and other Federal Agencies. The proposed rule has no specific application to onshore processing

facilities other than to require that they be described in a proposed plan together with their socioeconomic implications.

Comment—Health and safety considerations in the onshore mining industry are controlled by the Mine Safety and Health Administration and the Occupational Safety and Health Administration.

Response—Health and safety considerations in the OCS mining activities will continue to be the subject of the regulations of the Federal Agencies delegated the authority and responsibility for regulation of those activities.

Comment—States should have only an advisory role in regulating mining in the OCS.

Response—While MMS is committed to early and close coordination and consultation with States on OCS mineral development, OSC prospecting, discovery, delineation, development, and production activities are physically located outside the jurisdiction of any State; therefore, these are areas where States have an advisory role. Part of MMS's plan for exercising its jurisdiction and responsibility for OCS mineral resources is to provide adjacent States opportunities for participation in decisionmaking throughout the process from prelease planning to lease abandonment. In the absence of regulations, consultation and coordination with States concerning prospecting, leasing, and mining of OCS minerals have primarily been accomplished through joint State/Federal task forces established by the MMS and the Governors of adjacent States. A special work group with Alaska and five task forces have been established to date. Provision is made for the establishment of additional task forces in § 281.13 of the proposed leasing rules. The activities of each task force will depend on the areas and minerals involved and the particular concerns of the States that are represented on the task force. The proposed leasing rules provide a list of potential areas of activity for task forces, but it is not intended as an all-inclusive list. Postlease activities could include review of plans, environmental monitoring, and compliance inspections.

When a mineral deposit straddles the boundary between Federal and State jurisdiction, DOI expects to develop agreements with an adjacent State for joint management. These agreements would facilitate coordination and cooperation between MMS, agencies of the adjacent State, and State and Federal lessees in order to maximize efficiency, reduce regulatory burden,

and obtain the most equitable return to all parties.

Proposed § 282.8 also anticipates agreements between the Secretary and a Governor for operations when there are jurisdictional controversies, in accordance with section 7 of the OCSLA.

Comment—Applications for mining operations as well as any update reports should be handled by a single Agency.

Response—The MMS will approve or disapprove a proposed delineation, testing, and mining plan after consultations with adjacent States and other Federal Agencies, as appropriate. Discharges of pollutants associated with approved mining activities which are subject to EPA's NPDES permits will be subject to EPA approved discharge permits. Also, OCS installations and structures will be subject to the navigational-aids requirements of the USCG.

Comment—Mining plans should provide sufficient detail on mine-site conditions to allow reasonable review.

Response—Under the proposed rule, the lessee must provide sufficient data and information to permit technical and environmental evaluations which will provide a basis for MMS to make an informed decision to approve, disapprove, or require modification of the proposed activities.

Comment—Minimum royalty should be required.

Response—Provision is made for minimum royalty in the proposed leasing regulations in proposed 30 CFR Part 281.

Comment—Not every applicant should be required to prepare a detailed environmental study on the broad environmental and economic issues.

Response—Applicants under the proposed rule are required to address site-specific issues relating to a lessee's proposed operations and the impacts of those operations. The proposed activities and potential environmental impacts will be evaluated in environmental evaluations prepared in association with MMS's technical and environmental evaluation of the applicant's proposal. Broad environmental and economic issues will be addressed in environmental documents prepared in association with the OCS mineral lease sales.

Comment—Site-by-site approval of postlease operations whether or not it includes drilling should not be required.

Response—Under the proposed rule, sampling techniques, sample size, and proposed sampling locations would be specified in the delineation, testing, and mining plans submitted for MMS review and approval. Approval of the plan would constitute approval of the

sampling techniques, sample size, and sampling locations. Departures from an approved plan must be submitted for approval prior to implementing changes from the approved plan.

Comment—The type of diligence rule that protects oil, gas, and sulphur lessees from drainage by production on other properties should not be included in the postlease regulations.

Response—The diligence rules governing OCS oil and gas leases are designed to protect the lessor from loss, not the lessee. The diligence requirements of the proposed rule recognize that OCS minerals other than oil, gas, and sulphur generally do not migrate. Provisions to encourage development are addressed in proposed leasing regulations.

Comment—After approval of the mining plan, lessees should be able to mine the minerals in the most economic way (i.e., not be restricted by "high grading" rules).

Response—It is anticipated that each proposed mining plan will represent the lessee's view of the most economic way for it to mine the OCS minerals involved. Once a mining plan is approved, the lessee must comply with that plan unless and until a revision is approved. Proposed leasing regulations at 30 CFR Part 281 permit the Secretary to exercise discretion to adjust royalty rates or rentals in order to prevent premature abandonment of mining operations. However, these considerations have to be balanced with concern for the conservation of OCS natural resources and the prevention of waste.

Comment—Concerning abandonment of operations, commenters stated that the mining industry should not be saddled with open-ended liabilities.

Response—Provisions for the abandonment of operations and clearance of the lease where appropriate will be required for delineation, testing, and mining plans submitted for approval by MMS. The mining industry can protect itself from subsequent liabilities by planning for and carrying out proper cleanup and abandonment operations.

Comment—Regulations should provide environmental protection both offshore and onshore for all phases of postlease activities.

Response—The technical and environmental evaluations of any proposed activity will include consideration of measures to mitigate damage to the environment. While onshore activities are outside MMS's jurisdiction and subject to the regulations of other Federal Agencies as well as State and local agencies,

potential onshore environmental effects and mitigation measures will be addressed in the environmental evaluation of the proposal.

Comment—A commenter suggests that regulations for prelease, leasing, and postlease operations be combined.

Response—This suggestion was not adopted. Three separate sets of regulations are being prepared and are being promulgated in separate rulemakings. Each set of regulations covers a significantly different activity within a different timeframe. However, they are complementary and will be published sequentially in Chapter II of Title 30 of the Code of Federal Regulations (CFR), following the existing rules for oil, gas, and sulphur, to comprise a comprehensive set of rules reflective of MMS's authority and responsibility for administration of all OCS mineral activity under the OCSLA.

Comment—Are enough data available to assume that minimal environmental impacts would occur in deep waters?

Response—The MMS's ESP has developed considerable data and information about the OCS mining activities and their probable impacts. Under MMS's case-by-case approach, mitigation measures will be defined with specificity as mineral resource targets are identified and specific recovery methods are proposed. This proposed rule and the companion rules for prospective and leasing will enable MMS to effectively address site-specific environmental issues concerning specific commodities, technologies, and locations as the specific issues are defined. To ensure environmental protection when data are insufficient or unavailable, those activities which are authorized will be monitored to ensure the early detection of adverse impacts and the identification and implementation of effective mitigation measures to avoid or minimize adverse effects.

Comment—Postlease regulations should include program participation by States and other Federal Agencies.

Response—The proposed rule provides several opportunities for participation by representatives of State and Federal Agencies. The case-by-case approach to leasing provides for management flexibility, opportunity for effective coastal State and Federal Agency participation, and extensive environmental review. The proposed leasing regulations provide for State/Federal task forces, and the NEPA process requires Federal inter-Agency consultation and coordination. Review of leasing proposals and of delineation, testing, and mining plans will further facilitate the consultation and

coordination processes authorized under other Federal laws.

Comment—A programmatic EIS should be prepared for the proposed mining program.

Response—The MMS recognizes the potential for environmental impacts as a result of OCS mineral activities. The MMS has prepared a report, "Environmental Effects Overview: Marine Mining on the Outer Continental Shelf," OCS Report No. 87-0035, to provide the public with an early overview of the likely mining activities and potential impacts on the environment resulting from prospecting and postlease activities. Detailed coverage of potential environmental issues is not practicable now since many uncertainties remain at this early stage with respect to the nature, magnitude, location, and rate of future mining. Many types of ore deposits may be mined in a variety of environmental settings using any one of a diverse set of technologies. This raises questions whether a meaningful assessment can be conducted at this time. However, sufficient environmental safeguards are being included in these proposed rules to ensure that environmental evaluations will be prepared prior to approval of a plan of proposed operations. Possible impacts will be identified and appropriate mitigation measures determined as part of the DOI's environmental review process. Mitigation measures will be defined in lease and operating requirements. Commodity- and area-specific issues will be addressed by specially designed lease stipulations, and site- and operation-specific issues identified after the issuance of a lease will be addressed as conditions of approval for delineation, testing, and mining plans.

Comment—Two commenters suggested that DOI support the introduction of new legislation to govern the mining of minerals other than oil, gas, and sulphur since the OCSLA does not provide a clear legal basis for the promulgation of regulations.

Response—The MMS does not agree that new legislation is required to provide a clear legal basis for the promulgation of regulations to govern the mining of OCS minerals other than oil, gas, and sulphur. As previously noted, section 8(k) of the OCSLA specifically and clearly authorizes the Secretary to prescribe terms and conditions for leasing of OCS minerals other than oil, gas, and sulphur. Used in conjunction with other applicable sections of the OCSLA and other laws, this authority provides DOI with a clear legal basis for administering an OCS minerals mining program.

Comment—Several commenters recommended that regulations should provide for joint/Federal management of mineral resources and postlease operations including inspections.

Response—The MMS has primary authority and responsibility for the management of OCS mineral resources including postlease activities. The level of participation by adjacent States will vary from State to State. Where the boundary between the State and Federal jurisdictions is under dispute, leasing and postlease activities will be subject to joint approvals by the responsible Federal and State agencies pursuant to an interim agreement negotiated in accordance with § 282.8. It is anticipated that the level of participation for a specific adjacent State will be dictated by the degree to which the Governor of that State wants to participate and mutually acceptable conditions can be established. While the final rule does not discuss contracting with States, when such contracting is permissible under Federal law, it can be considered on a case-by-base basis for such activities as compliance inspections.

Comment—Several commenters expressed concern about environmental protection of fishery resources.

Response—Under the proposed rule, postlease activities will be subject to technical and environmental evaluations. To avoid or minimize adverse effects, mitigation measures can be included as conditions of approval, or a lessee may be required to modify the planned activities to ensure that those activities are conducted in an environmentally responsible manner. Necessary mitigation measures can be included as lease stipulations. Sensitive areas, where special protection is needed, can and will be withheld from leasing when appropriate.

Comment—Agencies should have a well-defined time limit for review and approval of plans.

Response—The proposed rule includes specific timeframes for review of delineation, testing, and mining plans. Those timeframes are applicable to instances involving minimal disruption of the environment. In those instances where an EIS is prepared in accordance with the practices and procedures prescribed by NEPA, those timeframes will be lengthened.

Comment—Several comments were received suggesting that postlease operating plans should be required.

Response—The proposed rule requires that postlease activities be conducted in accordance with an approved delineation, testing, and/or mining plan.

Comment—One commenter urged that hearings on the proposed rulemaking be held locally to allow public participation.

Response—The decision to hold public hearings on the proposed rule has not been made at this time. Three public hearings were held on the proposed prospecting rules in June 1987. If public hearings are to be held during the comment period of this proposed rule, it will be announced in the Federal Register.

Comment—Public interest groups; industry; and local, State, and Federal Agencies should be involved in the initial stages of regulation development.

Response—Meetings were held on March 7, 8, 9, 14, and 28, 1988, to receive comments and recommendations from various parties including representatives of industry, States, special interest groups, other Federal Agencies, and congressional staffs on a draft of this and the proposed leasing rules. Some of the comments were incorporated into the proposed rules.

Comment—To avoid military operational impacts, future mineral leasing programs should be handled in the same manner as the Gorda Ridge and Hawaii projects.

Response—In accordance with the Memorandum of Agreement dated July 20, 1983, that covers all mineral activities in the OCS, the MMS will consult with the various elements of the Department of Defense to avoid or minimize the impact of military operations on OCS mining activities and to minimize interference of OCS mining activities on military activities in the OCS.

Comment—Strong concerns were expressed that the mining of construction materials, placers, and phosphorite desposits could result in significant adverse environmental impacts, particularly in the marine biological community.

Response—The MMS recognizes the potential for adverse environmental impacts. Those impacts will be identified together with appropriate mitigation measures during the environmental evaluation of proposed activities. Some areas of the OCS may be found to be of such exceptional natural resource value that the advantages of maintaining those values outweigh the advantages of leasing the area.

Comment—One commenter recommended finding a means of financial assistance for affected States, so that they can function as full partners in the process, and as an incentive for locating onshore staging areas along their coasts.

Response—The finding of a means to provide financial assistance to adjacent States is outside the scope of this proposed rule. However, MMS intends to continue joint State/Federal cooperative activities including financial support for joint task forces and studies conducted through joint efforts.

Comment—One commenter recommended new legislation to provide for methods other than cash bonus bidding and for revenue sharing.

Response—If new legislation is enacted which provides for methods other than cash bonus bidding or for revenue sharing, revisions will be made in the regulations to effect required changes.

Comment—Vessels involved in postlease operations must comply with USCG regulations including workplace safety and health. Postlease vessel owners/operators must be aware of USCG accident-reporting requirements. Navigational safety and proper abandonment of operations must be conducted to satisfy USCG requirements.

Response—Vessel operators are presumed to be aware of the broad jurisdiction that USCG exercises over vessels operating in U.S. waters including the OCS. Lessees will be reminded that MMS approvals for proposed activities are conditional upon compliance with USCG and other governmental requirements for those activities which are not subject to MMS's authority.

Comment—A commenter suggested that OCS minerals production operations could be authorized by the same Corps of Engineers nationwide permit used for oil and gas explorations, production, and transportation.

Response—The applicability of the aforementioned COE nationwide permit to prelease and postlease mining activities associated with minerals other than oil, gas, and sulphur must be verified by the lessee with the COE office having jurisdiction over the area where proposed activity is to be carried out.

Comment—It was recommended that ocean disposal sites for dredged material be regulated by EPA and a specification for the sites be included in the postlease regulations.

Response—Ocean disposal associated with exploration, testing, and mining activities under an OCS mineral lease may be subject to EPA regulations. Over 125 ocean disposal areas have been designated by EPA for use as dredged material disposal sites. Disposal activities at each of these sites are regulated by the COE. It is conceivable that some of these sites could also

contain subsurface deposits of economically recoverable marine minerals. However, there is no indication that any of these areas would be used as disposal areas for mining wastes.

Authors: Andrew Bailey (retired), Charles Ham, John Mirabella, Jane Roberts, and William Wolf of the MMS; Michael Cruickshank of the USGS (retired); Ransom Read of the BOM; Ronald Smith and Donal Ziehl of the BLM; John Padan of NOAA, Department of Commerce; and Joseph Wilson of COE, U.S. Army.

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an EIS is not required.

The DOI has also determined that this document is not a major rule under Executive Order 12291 because the annual economic effect is less than \$100 million. The overall effect is expected to be less than \$1,000,000 per year. The costs are based on an expected two sales per year with three new leases per sale for a total of six new leases per year. When the program is mature, it is anticipated that there will be 10 preproduction leases and 10 leases in production.

The information collection requirements contained in 30 CFR Part 282 have been submitted to the Office of Management and Budget (OMB) for approval under 44 U.S.C. 3507. The collection of this information will not be required until it has been approved by OMB.

Public reporting burden for this collection of information is estimated to average 13.4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, Minerals Management Service; Mail Stop 631, 12203 Sunrise Valley Drive; Reston, Virginia 22091 and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The DOI certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (95 U.S.C. 601 *et seq.*) as the entities that engage in OCS mineral related activities are not considered small due to the technical complexity and financial resources

needed to successfully conduct OCS mineral related activities.

List of Subjects in 30 CFR Part 282

Administrative practice and procedure, Bonds, Continental shelf, Environmental protection, Mineral royalties, MMS, Mines, Public lands/mineral resources, Reporting and recordkeeping requirements.

Dated: July 6, 1988.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set out in the preamble, it is proposed that a new Part 282 be added to Chapter II, Subchapter B of Title 30 of the Code of Federal Regulations to read as follows:

PART 282—OPERATIONS IN THE OUTER CONTINENTAL SHELF FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR

Subpart A—General

- Sec.
- 282.0 Authority for information collection.
- 282.1 Purpose and authority.
- 282.2 Scope.
- 282.3 Definitions.
- 282.5 Opportunities for review and comment.
- 282.6 Disclosure of data and information to the public.
- 282.7 Disclosure of data and information to an adjacent State.
- 282.8 Jurisdictional controversies.

Subpart B—Jurisdiction and Responsibilities of Director

- 282.10 Jurisdiction and responsibilities of Director.
- 282.11 Director's authority.
- 282.12 Director's responsibilities.
- 282.13 Suspension of production or other operations.
- 282.14 Noncompliance, remedies, and penalties.
- 282.15 Cancellation of leases.

Subpart C—Obligations and Responsibilities of Lessees

- 282.20 Obligations and responsibilities of lessees.
- 282.21 Plans, general.
- 282.22 Delineation Plan.
- 282.23 Testing Plan.
- 282.24 Mining Plan.
- 282.25 Modified Plan.
- 282.26 Contingency Plan.
- 282.27 Conduct of operations.
- 282.28 Environmental protection measures.
- 282.29 Reports and records.
- 282.30 Right of use and easement.
- 282.31 Suspension of production or other operations.

Subpart D—Payments

- 282.40 Bonds.
- 282.41 Methods of royalty calculation.
- 282.42 Payments.

Subpart E—Appeals

- 282.50 Appeals.

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. *et seq.* (1970).

Subpart A—General

§ 282.0 Authority for information collection.

The information collection requirements in this part have been submitted for approval to the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number (to be added upon approval). The information is being collected to inform the Minerals Management Service (MMS) of general mining operations in the Outer Continental Shelf (OCS). The information will be used to ensure that operations are conducted in a safe and environmentally responsible manner in compliance with governing laws and regulations. The requirement to respond is mandatory.

§ 282.1 Purpose and authority.

(a) The Act authorizes the Secretary to prescribe such rules and regulations as may be necessary to carry out the provisions of the Act. The Secretary is authorized to prescribe and amend regulations that the Secretary determines to be necessary and proper in order to provide for the prevention of waste, conservation of the natural resources of the OCS, and the protection of correlative rights therein. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary is authorized to cooperate with adjacent State and other Departments and Agencies of the Federal Government.

(b) Subject to the supervisory authority of the Secretary, and unless otherwise specified, the regulations in this part shall be administered by the Director of the MMS.

§ 282.2 Scope.

The rules and regulations in this part apply as of their effective date to all operations conducted under a mineral lease for OCS minerals other than oil, gas, or sulphur issued or maintained under the provisions of the Act.

§ 282.3 Definitions.

"Act" means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*)

"Adjacent State" means with respect to any activity conducted or approved under this part, any coastal State—(1) that is, or is proposed to be, receiving for processing, refining, or transshipment OCS mineral resources commercially recovered from the seabed; (2) that is used, or is scheduled to be used, as a support base for

delineation, testing, or mining activities; or (3) in which there is a reasonable probability of significant effect on land or water uses from such activity.

"Contingency Plan" means a plan for action to be taken in emergency situations.

"Data" means geological and geophysical (G&G) facts and statistics or samples which have not been analyzed, processed, or interpreted.

"Development" means those activities which take place following the discovery of minerals in paying quantities including geophysical activities, drilling, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered.

"Director" means the Director of MMS of the U.S. Department of the Interior or an official authorized to act on the Director's behalf.

"Exploration" means the process of searching for minerals on a lease including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of minerals; (2) any drilling including the drilling of a borehole in which the discovery of a mineral other than oil, gas, or sulphur is made and the drilling of any additional boreholes needed to delineate any mineral deposits, and (3) the taking of sample portions of a mineral deposit to enable the lessee to determine whether to proceed with the development of production.

"Geological sample" means a collected portion of the seabed, the subseabed, or the overlying waters acquired while conducting postlease mining activities.

"Governor" means the Governor or the person or entity lawfully designated to exercise the power granted to a Governor.

"Information," means G&G data that has been analyzed, processed or interpreted.

"Lease" means one of the following, whichever is required by the context: Any form of authorization which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, specific minerals; or the area covered by that authorization.

"Lessee" means the party authorized by a lease, or an approved assignment thereof, to explore for and develop and produce the leased deposits in accordance with the regulations in this chapter. The term includes all parties holding that authority by or through the lessee.

"Major Federal action" means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act (NEPA) (i.e., an action which will have a significant impact on the quality of the human environment requiring preparation of an Environmental Impact Statement (EIS) pursuant to section 102(2)(C) of NEPA).

"Marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

"Minerals" has the same meaning as the term is defined in section 2(q) of the Act.

"OCS mineral" means any mineral found on or below the surface of the seabed but does not include oil, gas, sulphur, or salt, sand, or gravel intended for use in association with the development of oil, gas, or sulphur.

"Operator" means the individual, partnership, firm, or corporation having control or management of operations on the lease or a portion thereof. The operator may be a lessee, designated agent of the lessee, or holder of rights under an approved operating agreement.

"Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" means a citizen or national of the United States; an alien lawfully admitted for permanent residency in the United States as defined in 8 U.S.C. 1101(a)(20); a private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof; an association of such citizens, nationals, resident aliens or private, public, or municipal corporations, States, or political subdivisions of States; or anyone operating in a manner provided for by treaty or other applicable international agreements. The term does not include Federal Agencies.

"Production" means those activities which place after the successful completion of any means for the removal of minerals including such removal, field operations, transfer of minerals to shore, operations monitoring, and maintenance.

"Secretary" means the Secretary of the Interior or an official authorized to act on the Secretary's behalf.

"Testing" means removing bulk samples for processing tests and feasibility studies and/or the testing of mining equipment to obtain information needed to develop a detailed Mining Plan.

§ 282.5 Opportunities for review and comment.

(a) In carrying out MMS's responsibilities under the regulations in this part, the Director shall provide opportunities for Governors of adjacent States, State-Federal task forces, lessees and operators, other Federal Agencies, and other interested parties to review proposed activities described in a Delineation, Testing, or Mining Plan together with analysis of potential impacts on the environment, and to provide comments and recommendations for the disposition of the proposed plan.

(b)(1) For Delineation Plans, the Governor(s) of an adjacent State(s) shall be notified by the Director within 15 days following the submission of a request for approval of a Delineation Plan. Notification shall include a copy of the proposed Delineation Plan and the accompanying environmental information. The Governor(s) of an adjacent State(s) who wishes to comment on a proposed Delineation Plan may do so within 30 days of the receipt of the proposed plan and the accompanying information.

(2) In cases where an Environmental Assessment is to be prepared, the Director's invitation to provide comments may allow the Governor(s) of an adjacent State(s) more than 30 days following receipt of the proposed plan to provide comments.

(3) The Director shall notify Federal Agencies, as appropriate, with a copy of the proposed Delineation Plan and the accompanying environmental information within 15 days following the submission of the request. Agencies that wish to comment on a proposed Delineation Plan shall do so within 30 days following receipt of the plan and the accompanying information.

(c)(1) For Testing Plans, the Governor(s) of an adjacent State(s) shall be notified by the Director within 20 days following submission of a request for approval of a proposed Testing Plan. Notification shall include a copy of the proposed Testing Plan and the accompanying environmental information. The Governor(s) of an adjacent State(s) who wishes to comment on a proposed Testing Plan may do so within 60 days of the receipt

of a plan and the accompanying information.

(2) In cases where an EIS is to be prepared, the Director's invitation to provide comments may allow the Governor(s) of an adjacent State(s) more than 60 days following receipt of the proposed plan to provide comments.

(3) The Director shall notify Federal Agencies, as appropriate, with a copy of the proposed Testing Plan and the accompanying environmental information within 20 days following the submission of the request. Agencies that wish to comment on a proposed Testing Plan shall do so within 30 days following receipt of the plan and the accompanying information.

(d)(1) For Mining Plans, the Governor(s) of an adjacent State(s) shall be notified by the Director within 20 days following submission of a request for approval of a proposed Mining Plan. Notification shall include a copy of the proposed Mining Plan and the accompanying environmental information. The Governor(s) of an adjacent State(s) who wishes to comment on a proposed Mining Plan may do so within 60 days of the receipt of a plan and the accompanying information.

(2) In cases where an EIS is to be prepared, the Director's invitation to provide comments may allow the Governor(s) of an adjacent State(s) more than 60 days following receipt of the proposed plan to provide comments.

(3) The Director shall notify Federal Agencies, as appropriate, with a copy of the proposed Mining Plan and the accompanying environmental information within 20 days following the submission of the request. Agencies that wish to comment on a proposed Mining Plan shall do so within 60 days following receipt of the plan and the accompanying information.

(e) When the Governor(s) of an adjacent State(s) has provided comments pursuant to paragraphs (b), (c), and (d) of this section, the Governor(s) shall be given, in writing, a list of comments which are adopted, and the reasons for rejecting any of the recommendations of the Governor(s) or for implementing any alternative means identified during consultations with the Governor(s).

§ 282.6 Disclosure of data and information to the public.

(a) The Director shall make data, information, and samples available in accordance with the requirements and subject to the limitations of the Act, the Freedom of Information Act (5 U.S.C. 552) and the implementing regulations.

(b) Geophysical data, processed G&G information, interpreted G&G information, and other data and information submitted pursuant to the requirements of this part shall not be available for public inspection without the consent of the lessee so long as the lease remains in effect, unless the Director determines that earlier release of such information is necessary for effective and efficient development of a deposit.

(c) Geophysical data, processed geophysical information and interpreted geophysical information collected on a lease with high resolution systems (including, but not limited to, bathymetry, side-scan sonar, subbottom profiler and magnetometer) in compliance with stipulations or orders concerning protection of environmental aspects of the lease may be made available to the public 60 days after submittal to the Director, unless the lessee can demonstrate to the satisfaction of the Director that release of the information or data would unduly damage the lessee's competitive position.

§ 282.7 Disclosure of data and information to an adjacent State.

(a) Proprietary data, information, and samples submitted to MMS pursuant to the requirements of this part shall be made available for inspection by representatives of adjacent State(s) upon request by the Governor(s) in accordance with paragraphs (b), (c), and (d) of this section.

(b) Disclosure shall occur only after the Governor has entered into an agreement with the Secretary providing that:

(1) The confidentiality of the information shall be maintained;

(2) In any action commenced against the Federal Government or the State for failure to protect the confidentiality of proprietary information, the Federal Government or the State, as the case may be, may not raise as a defense any claim of sovereign immunity or any claim that the employee who revealed the proprietary information, which is the basis of the suit, was acting outside the scope of the person's employment in revealing the information;

(3) The State agrees to hold the United States harmless for any violation by the State or its employees or contractors of the agreement to protect the confidentiality of proprietary data, information, and samples; and

(c) The data, information, and samples available for inspection by representatives of adjacent State(s) pursuant to an agreement shall be related to leased lands.

§ 282.8 Jurisdictional controversies.

In the event of a controversy between the United States and a State as to whether certain lands are subject to Federal or State jurisdiction, either the Governor of the State or the Secretary may initiate negotiations in an attempt to settle the jurisdictional controversy. With the concurrence of the Attorney General, the Secretary may enter into an agreement with a State with respect to OCS mineral activities and to payment and impounding of rents, royalties, and other sums and with respect to the issuance or nonissuance of new leases pending settlement of the controversy.

Subpart B—Jurisdiction and Responsibilities of Director

§ 282.10 Jurisdiction and responsibilities of Director.

Subject to the authority of the Secretary, the following activities are subject to the regulations in this part and are under the jurisdiction of the Director: exploration, testing, and mining operations; handling, measurement, and transportation of OCS minerals; and other operations and activities conducted pursuant to a lease issued under Part 281 of this chapter, or pursuant to a right of use and easement granted under this part, by or on behalf of a lessee or the holder of a right of use and easement.

§ 282.11 Director's authority.

(a) In the exercise of jurisdiction under § 282.10, the Director is authorized and directed to act upon the requests, applications, and notices submitted under the regulations in this part; to issue either written or oral orders to govern lease operations; and to require compliance with applicable laws, regulations, and lease terms so that all operations conform to sound conservation practices and are conducted in a manner which is consistent with the following:

(1) Make such OCS minerals available to meet the Nation's needs in a timely manner;

(2) Balance OCS mineral resource development with protection of the human, marine, and coastal environments;

(3) Ensure the public a fair and equitable return on OCS minerals leased on the OCS; and

(4) Foster and encourage private enterprise.

(b)(1) The Director is to be provided ready access to all OCS mineral resource data and all environmental data acquired by the lessee or holder of a right of use and easement in the course of operations on a lease or right

of use and easement and may require a lessee or holder to obtain additional environmental data when deemed necessary to assure adequate protection of the human, marine, and coastal environments.

(2) The Director is to be provided an opportunity to inspect, cut, and remove representative portions of all samples acquired by a lessee in the course of operations on the lease.

(c) In addition to the rights and privileges granted to a lessee under any lease issued or maintained under the Act, on request, the Director may grant a lessee, subject to such conditions as the Director may prescribe, a right of use and easement to construct and maintain platforms, artificial islands, and/or other installations and devices which are permanently or temporarily attached to the seabed and which are needed for the conduct of leasehold exploration, testing, development, production, and processing activities or other leasehold related operations whether on or off the lease.

(d)(1) The Director may approve the consolidation of two or more OCS mineral leases or portions of two or more OCS mineral leases into a single mining unit requested by lessees, or the Director may require such consolidation when the operation of those leases or portions of leases as a single mining unit is in the interest of conservation of the natural resources of the OCS. A mining unit may also include all or portions of one or more OCS mineral leases with all or portions of one or more adjacent State leases for minerals in a common orebody. A single unit operator shall be responsible for submission of required Delineation, Testing, and Mining Plans covering OCS mineral operations for an approved mining unit.

(2) Operations such as exploration, testing, and mining activities conducted in accordance with an approved plan on any lease or portion of a lease which is subject to an approved mining unit shall be considered operations on each of the leases that is made subject to the approved mining unit.

(3) Minimum royalty paid pursuant to a Federal lease, which is subject to an approved mining unit, is creditable against the production royalties allocated to that Federal lease during the lease year for which the minimum royalty is paid.

(4) Any OCS minerals produced from State and Federal leases which are subject to an approved mining unit shall be accounted for separately unless a method of allocating production between State and Federal leases has

been approved by the Director and the appropriate State official.

§ 282.12 Director's responsibilities.

(a) The Director is responsible for the regulation of activities to assure that all operations conducted under a lease or right of use and easement are conducted in a manner that protects the environment and promotes orderly development of OCS mineral resources. Those activities are to be designed to prevent serious harm or damage to, or waste of, any natural resource (including OCS mineral deposits and oil, gas, and sulphur resources in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

(b)(1) In the evaluation of a Delineation Plan, the Director shall consider the plan is consistent with:

- (i) The provisions of the lease;
- (ii) The provisions of the Act;
- (iii) The provisions of the regulations prescribed under the Act;
- (iv) Other applicable Federal law; and
- (v) Requirements for the protection of the environment, health, and safety.

(2) Within 30 days following the release of an environmental assessment prepared pursuant to the regulations implementing NEPA or within 30 days following the comment period provided in § 282.5(b) of this part, the Director shall:

(i) Approve any Delineation Plan which is consistent with the criteria in paragraph (b)(1) of this section;

(ii) Require the lessee to modify any Delineation Plan that is inconsistent with the criteria in paragraph (b)(1) of this section; or

(iii) Disapprove a Delineation Plan when it is determined that an activity proposed in the plan would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to natural resources of the OCS including mineral deposits (in areas leased or not leased), or to the proposed activity cannot be modified to avoid the conditions.

(3) The Director shall notify the lessee in writing of the reason for disapproving a Delineation Plan or for requiring modification of a plan and the conditions that must be met for plan approval.

(c)(1) In the evaluation of a Testing Plan, the Director shall consider whether the plan is consistent with:

- (i) The provisions of the lease;
- (ii) The provisions of the Act;
- (iii) The provisions of the regulations prescribed under the Act;
- (iv) Other applicable Federal law;

(v) Environmental, safety, and health requirements; and

(vi) The statutory requirement to protect property, natural resources of the OCS, including mineral deposits (in areas leased or not leased), and the national security or defense.

(2) Within 60 days following the release of a final EIS prepared pursuant to NEPA or within 60 days following the comment period provided in § 282.5(c) of this part, the Director shall:

(i) Approve any Testing Plan which is consistent with the criteria in paragraph (c)(1) of this section;

(ii) Require the lessee to modify any Testing Plan which is inconsistent with the criteria in paragraph (c)(1) of this section; or

(iii) Disapprove any Testing Plan when the Director determines that exceptional geological conditions in the lease area, exceptional resource values in the marine or coastal environment, or other exceptional circumstances exist, and that (A) implementation of the activities described in the plan would probably cause serious harm and damage to life (including fish and other aquatic life), to property, to any mineral deposit (in areas leased or not leased) to the national security or defense, or the marine, coastal, or human environments; (B) that the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and (C) the advantages of disapproving the Testing Plan outweigh the advantages of development and production of the OCS mineral resources.

(3) The Director shall notify the lessee in writing of the reason(s) for disapproving a Testing Plan or for requiring modification of a Testing Plan and the conditions that must be met for approval of the plan.

(d)(1) In the evaluation of a Mining Plan, the Director shall consider whether the plan is consistent with:

- (i) The provisions of the lease;
- (ii) The provisions of the Act;
- (iii) The provisions of the regulations prescribed under the Act;
- (iv) Other applicable Federal law;
- (v) Environmental, safety, and health requirements; and

(vi) The statutory requirements to protect property, natural resources of the OCS, including mineral deposits (in areas leased or not leased), and the national security or defense.

(2) Within 60 days following the release of a final EIS prepared pursuant to NEPA or within 60 days following the comment period provided in § 282.5(d) of this part, the Director shall:

(i) Approve any Mining Plan which is consistent with the criteria in paragraph (d)(1) of this section;

(ii) Require the lessee to modify any Mining Plan which is inconsistent with the criteria in paragraph (d)(1) of this section; or

(iii) Disapprove any Mining Plan when the Director determines that exceptional geological conditions in the lease area, exceptional resource values in the marine or coastal environment, or other exceptional circumstances exist, and that (A) implementation of the activities described in the plan would probably cause serious harm and damage to life (including fish and other aquatic life), to property, to any mineral deposit (in areas leased or not leased), to the national security or defense, or the marine, coastal, or human environments; (B) that the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and (C) the advantages of disapproving the Mining Plan outweigh the advantages of development and production of the OCS mineral resources.

(3) The Director shall notify the lessee in writing of the reason(s) for disapproving a Mining Plan or for requiring modification of a Mining Plan and the conditions that must be met for approval of the plan.

(e) The Director shall assure that a scheduled onsite compliance inspection of each facility which is subject to regulations in this part is conducted at least once a year. The inspection shall be to determine that the lessee is in compliance with the requirements of the law; provisions of the lease; the approved Delineation, Testing, or Mining Plan; and the regulations in this part. Additional unscheduled onsite inspections shall be conducted without advance notice to the lessee to assure compliance with the provisions of applicable law; the lease; the approved Delineation, Testing, or Mining Plan; and the regulations in this part.

(f)(1) The Director shall, after completion of the technical and environmental evaluations, approve, disapprove, or require modification of the lessee's requests, applications, plans, and notices submitted pursuant to the provisions of this part; issue orders to govern lease operations; and require compliance with applicable provisions of the law, the regulations, the lease, and the approved Delineation, Testing, or Mining Plans. The Director may give oral orders or approvals whenever prior approval is required before the commencement of an operation or activity. Oral orders or approvals given

in response to a written request shall be confirmed in writing within 3 working days after issuance of the order or granting of the oral approval.

(2) The Director shall, after completion of the technical and environmental evaluations, approve, disapprove, or require modification, as appropriate, of the design plan, fabrication plan, and installation plan for platforms, artificial islands, and other installations and devices permanently or temporarily attached to the seabed. The approval, disapproval, or requirement to modify such plans may take the form of a condition of granting a right of use and easement under paragraph (a) of this section or as authorized under any lease issued or maintained under the Act.

(g) The Director shall establish practices and procedures to govern the collection of all rents, royalties, and other payments due the Federal Government in accordance with terms of the leasing notice, the lease, and the applicable Royalty Management regulations listed in § 281.26(d) of this chapter.

(h) The Director may prescribe or approve, in writing or orally, departures from the operating requirements of the regulations of this part when such departures are necessary to facilitate the proper development of a lease, to conserve natural resources, or protect life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

§ 282.13 Suspension of production or other operations.

(a) The Director may direct the suspension or temporary prohibition of production or any other operation or activity on all or any part of a lease when it has been determined that such suspension or temporary prohibition is in the national interest to:

(1) Facilitate proper development of a lease including a reasonable time to develop a mine and construct necessary support facilities, or

(2) Allow for the construction or negotiation for use of transportation facilities.

(b) The Director may also direct or, at the request of the lessee, approve a suspension or temporary prohibition of production or any other operation or activity, if:

(1) The lessee failed to comply with a provision of applicable law, regulation, order, or the lease;

(2) There is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral

deposit, or the marine, coastal, or human environment;

(3) The suspension or temporary prohibition is in the interest of national security or defense;

(4) The suspension or temporary prohibition is necessary for the initiation and conduct of an environmental evaluation to define mitigation measures to avoid or minimize adverse environmental impacts.

(5) The suspension or temporary prohibition is necessary to facilitate the installation of equipment necessary for safety of operations and protection of the environment;

(6) The suspension or temporary prohibition is necessary to allow for undue delays encountered by the lessee in obtaining required permits or consents, including administrative or judicial challenges or appeals;

(7) The Director determines that continued operations would result in premature abandonment of a producing mine, resulting in the loss of otherwise recoverable OCS minerals;

(8) The Director determines that continued operations would result in waste due to continued production of a surplus of minerals under adverse market conditions; or

(9) The suspension or temporary prohibition is necessary to comply with judicial decrees prohibiting production or any other operation or activity, or the permitting of those activities, effective the date set by the court for that prohibition.

(c) When the Director orders or approves a suspension or a temporary prohibition of operation or activity including production on all of a lease pursuant to paragraphs (a) or (b) of this section, the term of the lease shall be extended for a period of time equal to the period of time that the suspension or temporary prohibition is in effect, except that no lease shall be so extended when the suspension or temporary prohibition is the result of the lessee's gross negligence or willful violation of a provision of the lease or governing regulations.

(d) The Director may, at any time within the period prescribed for a suspension or temporary prohibition issued pursuant to paragraph (b)(2) of this section, require the lessee to submit a Delineation, Testing, or Mining Plan for approval in accordance with the requirements for the approval of such plans in this part.

(e)(1) When the Director orders or issues a suspension or a temporary prohibition pursuant to paragraph (b)(2) of this section, the Director may require the lessee to conduct site-specific studies to identify and evaluate the

cause(s) of the hazard(s) generating the suspension or temporary prohibition, the potential for damage from the hazard(s), and the measures available for mitigating the hazard(s). The nature, scope, and content of any study shall be subject to approval by the Director. The lessee shall furnish copies and all results of any such study to the Director. The cost of the study shall be borne by the lessee unless the Director arranges for the cost of the study to be borne by a party other than the lessee. The Director shall make results of any such study available to interested parties and to the public as soon as practicable after the completion of the study and submission of the results thereof.

(2) When the Director determines that measures are necessary, on the basis of the results of the studies conducted in accordance with paragraph (e)(1) of this section and other information available to and identified by the Director, the lessee shall be required to take appropriate measures to mitigate, avoid, or minimize the damage or potential damage on which the suspension or temporary prohibition is based. When deemed appropriate by the Director, the lessee shall submit a revised Delineation, Testing, or Mining Plan to incorporate the mitigation measures required by the Director. In choosing between alternative mitigation measures, the Director shall balance the cost of the required measures against the reduction or potential reduction in damage or threat of damage or harm to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment.

(f)(1) If under the provisions of § 282.13(b) (2), (3), and (4) of this part, the Director, with respect to any lease, directs the suspension of production or other operations on the entire leasehold, no payment of rental or minimum royalty shall be due for or during the period of the directed suspension. If under the provisions of § 282.13(b) (2), (3), and (4), of this part the Director, with respect to a lease on which there has been no production, directs the suspension of operations on the entire leasehold, no payment of rental shall be due during the period of the directed suspension.

(2) If under the provisions of this section, the Director grants the request of a lessee for a suspension of production or other operations, the lessee's obligations to pay rental, minimum royalty, or royalty shall continue to apply during the period of the approved suspension.

(3) If the lease anniversary date falls within a period of suspension for which no rental or minimum royalty payments are required under paragraph (a) of this section, the prorated rentals or minimum royalties are due and payable as of the date the suspension period terminates. These amounts shall be computed and notice thereof given the lessee. The lessee shall pay the amount due within 30 days after receipt of such notice. The anniversary date of a lease shall not change by reason of any period of lease suspension or rental or royalty relief resulting therefrom.

§ 282.14 Noncompliance, remedies, and penalties.

(a)(1) If the Director determines that a lessee has failed to comply with applicable provisions of law; the regulations in this part; other applicable regulations; the lease; the approved Delineation, Testing, or Mining Plan; or the Director's orders or instructions, and the Director determines that such noncompliance poses a threat of immediate, serious, or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Director shall order the lessee to take immediate and appropriate remedial action to alleviate the threat. Any oral orders shall be followed up by service of a notice of non-compliance upon the lessee by delivery in person to the lessee or agent, or by certified or registered mail addressed to the lessee at its last known address.

(2) If the Director determines that the lessee has failed to comply with applicable provisions of law; the regulations in this part; other applicable regulations; the lease; the requirements of an approved Delineation, Testing, or Mining Plan; or the Director's orders or instructions, and such noncompliance does not pose a threat of immediate, serious, or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Director shall serve a notice of noncompliance upon the lessee by delivery in person to the lessee or agent or by certified or registered mail addressed to the lessee at the last known address.

(b) A notice of noncompliance shall specify in what respect(s) the lessee has failed to comply with the provisions of applicable law; regulations; the lease; the requirements of an approved Delineation, Testing, or Mining Plan; or the Director's orders or instructions, and shall specify the action(s) which must be taken to correct the noncompliance and

the time limits within which such action must be taken.

(c) Failure of a lessee to take the actions specified in the notice of noncompliance within the time limit specified shall be grounds for a suspension of operations and other appropriate actions including but not limited to the assessment of a civil penalty of up to \$10,000 per day for each violation that is not corrected within the time period specified.

(d) Whenever the Director determines on the basis of sufficient evidence that a violation of or failure to comply with any provision of the Act; or any provision of a lease, license, or permit issued pursuant to the Act; or any provision of any regulation promulgated under the Act probably occurred and that such apparent violation continued beyond notice of the violation and the expiration of the reasonable time period allowed for corrective action, the Director shall follow the procedures concerning remedies and penalties in Subpart N, Remedies and Penalties, of Part 250 of this title to determine and assess an appropriate penalty.

(e) The remedies and penalties prescribed in this section shall be concurrent and cumulative, and the exercise of one shall not preclude the exercise of the other. Further, the remedies and penalties prescribed in this section shall be in addition to any other remedies and penalties afforded by any other law or regulation.

§ 282.15 Cancellation of leases.

(a) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act and the default continues for a period of 30 days after mailing of notice by registered or certified letter to the lease owner at the owner's record post office address, the Secretary may cancel the lease pursuant to section 5(c) of the Act, and the lessee shall not be entitled to compensation. Any such cancellation is subject to judicial review as provided by section 23(b) of the Act.

(b) Whenever the owner of any producing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act, the Secretary may cancel the lease only after judicial proceedings pursuant to section 5(d) of the Act, and the lessee shall not be entitled to compensation.

(c) Any lease issued under the Act, whether producing or not, may be canceled by the Secretary upon proof that it was obtained by fraud or misrepresentation and after notice and opportunity to be heard has been afforded to the lessee.

(d) The Secretary may cancel a lease in accordance with the following:

(1) Cancellation may occur at any time if the Secretary determines after a hearing that—

(i) Continued activity pursuant to such lease would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of cancellation outweigh the advantages of continuing such lease in force.

(2) Cancellation shall not occur unless and until operations under such lease shall have been under suspension or temporary prohibition by the Secretary, with due extension of any lease term continuously for a period of 5 years or for a lesser period upon request of the lessee;

(3) Cancellation shall entitle the lessee to receive such compensation as is shown to the Secretary as being equal to the lesser of—

(i) The fair value of the canceled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, and all other costs reasonably anticipated on the lease, or

(ii) The excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement), except that (A) with respect to leases issued before September 18, 1978, such compensation shall be equal to the amount specified in paragraph (d)(3)(i) of this section; and (B) in the case of joint leases which are canceled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for such loss from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question.

Subpart C—Obligations and Responsibilities of Lessees

§ 282.20 Obligations and responsibilities of lessees.

(a) The lessee shall comply with the provisions of applicable laws; regulations; the lease; the requirements of the approved Delineation, Testing, or Mining Plans; and other written or oral orders or instructions issued by the Director when performing exploration, testing, development, and production activities pursuant to a lease issued under Part 281 of this title. The lessee shall take all necessary precautions to prevent waste and damage to oil, gas, sulphur, and OCS mineral-bearing formations and shall conduct operations in such manner that does not cause or threaten to cause harm or damage to life (including fish and other aquatic life), to property, to the national security or defense, or to the marine, coastal, or human environment. The lessee shall make all mineral resource data and information and all environmental data and information acquired by the lessee in the course of exploration, testing, development, and production operations on the lease available to the Director for examination and copying at the lease site or an onshore location convenient to the Director.

(b) In all cases where there is more than one lease owner of record, one person shall be designated payor for the lease. The payor shall be responsible for making all rental, minimum royalty, any royalty payments.

(c) In all cases where lease operations are not conducted by the exclusive owner of record, a "designation of operator" shall be submitted to and accepted by the Director prior to the commencement of leasehold operations. This designation when accepted will be recognized as authority for the designee to act on behalf of the lessees and to fulfill the lessees' obligations under the Act, the lease, and the regulations of this part. All changes of address and any termination of a designation of operator shall be reported immediately, in writing, to the Director. In the case of a termination of a designation of operator or in the event of a controversy between the lessee and the designated operator, both the lessee and the designated operator will be responsible for the protection of the interests of the lessor.

(d) When required by the Director or at the option of the lessee, the lessee shall submit to the Director the designation of a local representative empowered to receive notices, provide access to OCS mineral and environmental data and information,

and comply with orders issued pursuant to the regulations of this part. If there is a change in the designated representative, the Director shall be notified immediately.

(e) Before beginning operations, the lessee(s) shall inform the Director in writing of any designation of a local representative under paragraph (c) of this section and the address of the mine office responsible for the exploration, testing, development, or production activities; the lessee's temporary and permanent addresses; or the name and address of the designated operator who will be responsible for the operations, and who will act as the local representative of the lessee. The Director shall also be informed of each change thereafter in the address of the mine office or in the name or address of the local representative.

(f) The holder of a right of use and easement shall exercise its rights under the right of use and easement in accordance with the regulations of this part.

(g) A lessee shall submit reports and maintain records in accordance with § 282.29 of this part.

(h) When an oral approval is given by MMS in response to an oral request under these regulations, the oral request shall be confirmed in writing by the lessee or holder of a right of use and easement within 72 hours.

(i) The lessee is responsible for obtaining all permits and approvals from MMS or other Agencies needed to carry out exploration, testing, development, and production activities under a lease issued under Part 281 of this title.

§ 282.21 Plans, general.

(a) No exploration, testing, development, or production activities, except preliminary activities, shall be commenced or conducted on any lease except in accordance with a plan submitted by the lessee and approved by the Director. Plans will not be approved before completion of comprehensive technical and environmental evaluations to assure that the activities described will be carried out in a safe and environmentally responsible manner. Prior to the approval of a plan, the Director will assure that the lessee is prepared to take adequate measures to prevent waste; conserve natural resources of the OCS; and protect the environment, human life, and correlative rights. The lessee shall demonstrate to the satisfaction of the Director that the lease is in good standing, the lessee is authorized and capable of conducting the activities described in the plan, and

that an acceptable bond has been provided.

(b) Plans shall be submitted to the Director for approval. The lessee shall submit the number of copies prescribed by the Director. Such plans shall describe in detail the activities that are to be conducted and shall demonstrate that the proposed exploration, testing, development, and production activities will be conducted in an operationally safe and environmentally responsible manner that is consistent with the provisions of the lease, applicable laws, and regulations. The Governor of an affected State(s) and other Federal Agencies shall be provided an opportunity to review and provide comments on proposed Delineation, Testing, and Mining Plans and any proposal for a significant modification to an approved plan. Following review, including the technical and environmental evaluations, the Director shall either approve, disapprove, or require the lessee to modify its proposed plan.

(c) Lessees are not required to submit a Delineation or Testing Plan prior to submittal of a proposed Testing or Mining Plan if the lessee has sufficient data and information on which to base a Testing or Mining Plan without carrying out postlease exploration and/or testing activities. A Mining Plan may include proposed exploration or testing activities where those activities are needed to obtain additional data and information on which to base plans for future mining activities. A Testing Plan may include exploration activities when those activities are needed to obtain additional data or information on which to base plans for future testing or mining activities.

(d) Preliminary activities are bathymetric, geological, geophysical, mapping, and other surveys necessary to develop a comprehensive Delineation, Testing, or Mining Plan. Such activities are those which have no significant adverse impact on the natural resources of the OCS. The lessee shall give notice to the Director at least 30 days prior to initiating the proposed preliminary activities on the lease. The notice shall describe in detail those activities that are to be conducted and the time schedule for conducting those activities.

(e) Leasehold activities shall be carried out with due regard to conservation of resources, paying particular attention to the wise management of OCS mineral resources, minimizing waste of the leased resource(s) in mining and processing, and preventing damage to unmined

parts of the mineral deposit and other resources of the OCS.

§ 282.22 Delineation Plan.

All exploration activities shall be conducted in accordance with a Delineation Plan submitted by the lessee and approved by the Director. The Delineation Plan shall describe the proposed activities necessary to locate leased OCS minerals, characterize the quantity and quality of the minerals, and generate other information needed for the development of a comprehensive Testing or Mining Plan. A Delineation Plan at a minimum shall include the following:

- (a) The OCS mineral(s) of primary interest.
- (b) A brief narrative description of the activities to be conducted and how the activities will lead to the discovery and evaluation of a commercially minable deposit on the lease.
- (c) The name, registration, and type of equipment to be used, including vessel types as well as their navigation and mobile communication systems, and transportation corridors to be used between the lease and shore.
- (d) Information showing that the equipment to be used (including the vessel) is capable of performing the intended operation in the environment which will be encountered.
- (e) Maps showing the proposed locations of test drill holes, the anticipated depth of penetration of test drill holes, the locations where surficial samples were taken, and the location of proposed geophysical survey lines for each surveying method being employed.
- (f) A description of measures to be taken to avoid, minimize, or otherwise mitigate air, land, and water pollution and damage to aquatic and wildlife species and their habitats; any unique or special features in the lease area; aquifers; other natural resources of the OCS; and hazards to public health, safety, and navigation.
- (g) A schedule indicating the starting and completion dates for each proposed exploration activity.
- (h) A list of any known archaeological resources on the lease and measures to assure that the proposed exploration activities do not damage those resources.
- (i) A description of any potential conflicts with other uses and users of the area.
- (j) A description of measures to be taken to monitor the effects of the proposed exploration activities on the environment in accordance with § 282.28(c) of this part.
- (k) A detailed description of practices and procedures to effect the

abandonment of exploration activities, e.g., plugging of test drill holes. The proposed procedures shall indicate the steps to be taken to assure that test drill holes and other testing procedures which penetrate the seafloor to a significant depth are properly sealed and that the seafloor is left free of obstructions or structures that may present a hazard to other uses or users of the OCS such as navigation or commercial fishing.

(l) A detailed description of the cycle of all materials, the method for discharge and disposal of waste and refuse, and the chemical and physical characteristics of waste and refuse.

(m) A description of the potential environmental impacts of the proposed exploration activities including the following:

- (1) The location of associated port, transport, processing, and waste disposal facilities and affected environment (e.g., maps, land use, and layout);
 - (2) A description of the nature and degree of environmental impacts and the domestic socioeconomic effects of construction and operation of the associated facilities, including waste characteristics and toxicity;
 - (3) Any proposed mitigation measures to avoid or minimize adverse impacts on the environment;
 - (4) A certificate of consistency with the federally approved State coastal zone management program, where applicable; and
 - (5) Alternative sites and technologies considered by the lessee and the reasons why they were not chosen.
- (n) Any other information needed for technical evaluation of the planned activity, such as sample analyses to be conducted at sea, and the evaluation of potential environmental impacts.

§ 282.23 Testing Plan.

All testing activities shall be conducted in accordance with a Testing Plan submitted by the lessee and approved by the Director. Where a lessee needs more information to develop a detailed Mining Plan than is obtainable under an approved Delineation Plan, to prepare feasibility studies, to carry out a pilot program to evaluate processing techniques or technology or mining equipment, or to determine environmental effects by a pilot test mining operation, the lessee shall submit a comprehensive Testing Plan for the Director's approval. Any OCS minerals acquired during activities conducted under an approved Testing Plan will be subject to the payment of royalty pursuant to the governing lease

terms. A Testing Plan at a minimum shall include the following:

- (a) The nature and purpose of the proposed testing program.
- (b) A comprehensive description of the activities to be performed including descriptions of the proposed methods for analysis of samples taken.
- (c) A narrative description and maps showing water depths and the locations of the proposed pilot mining or other testing activities.
- (d) A comprehensive description of the method and manner in which testing activities will be conducted and the results the lessee expects to obtain as a result of those activities.
- (e) The name, registration, and type of equipment to be used, including vessel types together with their navigation and mobile communication systems, and transportation corridors to be used between the lease and shore.
- (f) Information showing that the equipment to be used (including the vessel) is capable of performing the intended operation in the environment which will be encountered.
- (g) A schedule specifying the starting and completion dates for each of the testing activities.
- (h) A list of known archaeological resources on the lease and measures to be used to assure that the proposed testing activities do not damage those resources.
- (i) A description of any potential conflicts with other uses and users of the area.
- (j) A description of the measures to be taken to monitor the impacts of the proposed testing activities in accordance with § 282.28(c) of this part.
- (k) A detailed description of the cycle of all materials including samples and wastes, the method for discharge and disposal of such waste and refuse, and the chemical and physical characteristics of such waste and refuse.
- (l) A detailed description of practices and procedures to effect the abandonment of testing activities, e.g., abandonment of a pilot mining facility. The proposed procedures shall indicate the steps to be taken to assure that mined areas do not pose a threat to the environment and that the seafloor is left free of obstructions and structures that may present a hazard to other uses or users of the OCS such as navigation or commercial fishing.
- (m) A description of potential environmental impacts of testing activities including the following:
 - (1) The location of associated port, transport, processing, and waste disposal facilities and affected

environment (e.g., maps, land use, and layout);

(2) A description of the nature and degree of potential environmental impacts of the proposed testing activities and the domestic socioeconomic effects of construction and operation of the proposed testing facilities, including waste characteristics and toxicity;

(3) Any proposed mitigation measures to avoid or minimize adverse impacts on the environment;

(4) A certificate of consistency with the federally approved State coastal zone management program, where applicable; and

(5) Alternate sites and technologies considered by the lessee and the reasons why they were not selected.

(n) Any other information needed for technical evaluation of the planned activities and for evaluation of the impact of those activities on the human, marine, and coastal environments.

§ 282.24 Mining Plan.

All OCS mineral development and production activities shall be conducted in accordance with a Mining Plan submitted by the lessee and approved by the Director. A Mining Plan shall include comprehensive detailed descriptions, illustrations, and explanations of the proposed OCS mineral development, production, and processing activities and accurately present the lessee's proposed plan of operation. A Mining Plan at a minimum shall include the following:

(a) A narrative description of the mining activities including:

(1) The OCS mineral(s) or material(s) to be recovered;

(2) Estimates of the number of tons and grade(s) of ore to be recovered;

(3) Anticipated annual production;

(4) Volume of ocean bottom expected to be disturbed (area and depth of disruption) each year; and

(5) All activities of the mining cycle from extraction through processing and waste disposal.

(b) Maps of the lease showing water depths, the outline of the mineral deposit(s) to be mined with cross sections showing thickness, and the area(s) anticipated to be mined each year.

(c) The name, registration, and type of equipment to be used, including vessel types as well as their navigation and mobile communication systems, and transportation corridors to be used between the lease and shore.

(d) Information showing that the equipment to be used (including the vessel) is capable of performing the

intended operation in the environment which will be encountered.

(e) A description of equipment to be used in mining, processing, and transporting of the ore.

(f) A schedule indicating the anticipated starting and completion dates for each activity described in the plan.

(g) For onshore processing, a description of how OCS minerals are to be processed and how the produced OCS minerals will be weighed, assayed, and royalty determinations made.

(h) For at-sea processing, additional information including type and size of installation or structures and the method of tailings disposal.

(i) A list of known archaeological resources on the lease and the measures to be taken to assure that the proposed mining activities do not damage the resources.

(j) Description of any potential conflicts with other uses and users of the area.

(k) A detailed description of the nature and occurrence of the OCS Mineral deposit(s) in the leased area with adequate maps and sections.

(l) A detailed description of development and mining methods to be used, the proposed sequence of mining or development, the expected production rate, the method and location of the proposed processing operation, and the method of measuring production.

(m) A detailed description of the method of transporting the produced OCS minerals from the lease to shore and adequate maps showing the locations of pipelines, conveyors, and other transportation facilities and corridors.

(n) A detailed description of the cycle of all materials including samples and wastes, the method of discharge and disposal of waste and refuse, and the chemical and physical characteristics of the waste and refuse.

(o) A detailed description of measures to be taken to monitor the impacts of the proposed mining and processing activities on the environment in accordance with § 282.28(c) of this part.

(p) A detailed description of practices and procedures to effect the abandonment of mining and processing activities. The proposed procedures shall indicate the steps to be taken to assure that mined areas on tailing deposits do not pose a threat to the environment and that the seafloor is left free of obstructions and structures that present a hazard to other users or uses of the OCS such as navigation or commercial fishing.

(q) A description of potential environmental impacts of mining activities including the following:

(1) The location of associated port, transport, processing, and waste disposal facilities and the affected environment (e.g., maps, land use, and layout);

(2) A description of the nature and degree of potential environmental impacts of the proposed mining activities and the domestic socioeconomic effects of construction and operation of the associated facilities including waste characteristics and toxicity;

(3) Any proposed mitigation measures to avoid or minimize adverse impacts on the environment;

(4) A certificate of consistency with the federally approved State coastal zone management program, where applicable; and

(5) Alternative sites and technologies considered by the lessee and the reasons why they were not chosen.

(r) Any other information needed for technical evaluation of the proposed activities and for the evaluation of potential impacts on the environment.

§ 282.25 Modified Plan.

Approved Delineation, Testing, and Mining Plans may be modified upon the Director's approval of the changes proposed. When circumstances warrant, the Director may direct the lessee to modify an approved plan to adjust to changed conditions. If the lessee requests the change, the lessee shall submit a detailed, written statement of the proposed modifications and the justification for the proposed changes.

§ 282.26 Contingency Plan.

(a) When required by the Director, a lessee shall include a Contingency Plan as part of its request for approval of a Delineation, Testing, or Mining Plan. The Contingency Plan shall comply with the requirements of § 282.28(f) of this part.

(b) The Director may order or the lessee may request the Director's approval of a modification of the Contingency Plan when such a change is necessary to reflect any new information concerning the nature, magnitude, and significance of potential equipment or procedural failures or the effectiveness of the corrective actions described in the Contingency Plan.

§ 282.27 Conduct of operations.

(a) The lessee shall conduct all exploration, testing, development, and production activities and other operations in a safe and workmanlike

manner and shall maintain equipment in a manner which assures the protection of the lease and its improvements, the health and safety of all persons, and the conservation of property and the environment.

(b) Nothing in this part shall preclude the use of new or alternative technologies, techniques, procedures, equipment, or activities, other than those prescribed in the regulations of this part, if such other technologies, techniques, procedures, equipment, or activities afford a degree of protection, safety, and performance equal to or better than that intended to be achieved by the regulations of this part, provided the lessee obtains the written approval of the Director prior to the use of such new or alternative technologies, techniques, procedures, equipment, or activities.

(c) The lessee shall immediately notify the Director when there is a death or serious injury; fire, explosion, or other hazardous event which threatens damage to life, a mineral deposit, or equipment; spills of oil, chemical reagents, or other liquid pollutants which could cause pollution; or damage to aquatic life or the environment associated with operations on the lease. As soon as practical, the lessee shall file a detailed report on the event and action(s) taken to control the situation and to mitigate any damages.

(d)(1) Lessees shall provide means, at all reasonable hours either day or night, for the Director to inspect or investigate the conditions of the operation and to determine whether applicable regulations; terms and conditions of the lease; and the requirements of the approved Delineation, Testing, or Mining Plan are being met.

(2) A lessee shall, on request by the Director, furnish food, quarters and transportation for MMS representatives to inspect its facilities. Upon request, the lessee will be reimbursed by the United States for the actual costs which it incurs as a result of its providing food, quarters, and transportation for an MMS representative's stay of more than 10 hours. Requests for reimbursement must be submitted within 60 days following the cost being incurred.

(e) Mining and processing vessels, platforms, structures, artificial islands, and mobile drilling units which have helicopter landing facilities shall be identified with at least one sign using letters and figures not less than 12 inches in height. Signs for structures without helicopter landing facilities shall be identified with at least one sign using letters and figures not less than 3 inches in height. Signs shall be affixed at a location that is visible to

approaching traffic and shall contain the following information which may be abbreviated:

- (1) Name of the lease operator;
- (2) The area designation based on Official OCS Protraction Diagrams;
- (3) The block number in which the facility is located; and
- (4) Vessel, platform, structure, or rig name.

(f)(1) Drilling.
(i) When drilling on lands valuable or potentially valuable for oil and gas or geopressured or geothermal resources, drilling equipment shall be equipped with blowout prevention and control devices acceptable to the Director before penetrating more than 500 feet unless a different depth is specified in advance by the Director.

(ii) In cases where the Director determines that there is sufficient likelihood of encountering pressurized hydrocarbons, the Director may require that the lessee comply with all or portions of the requirements in Part 250, Subpart D, of this title.

(iii) Before drilling any hole which may penetrate an aquifer, the lessee shall follow the procedures included in the approved plan for the penetration and isolation of the aquifer during the drilling operation, during use of the hole, and for subsequent abandonment of the hole.

(iv) Cuttings from holes drilled on the lease shall be disposed of and monitored with the approved plan.

(v) The use of muds in drilling holes on the lease and their subsequent disposition shall be according to the approved plan.

(2) All drill holes which are susceptible to logging shall be logged, and the lessee shall prepare a detailed lithologic log of each drill hole. Drill holes which are drilled deeper than 500 feet shall be drilled in a manner which permits logging. Copies of logs of cores and cuttings and all in-hole surveys such as electronic logs, gamma ray logs, neutron density logs, and sonic logs shall be provided to the Director.

(3) Drill holes for exploration, testing, development, or production shall be properly plugged and abandoned to the satisfaction of the Director in accordance with the approved plan and in such a manner as to protect the surface and not endanger any operation; any freshwater aquifer; or deposit of oil, gas, or other mineral substance.

(g) The use of explosives on the lease shall be in accordance with the approved plan.

(h)(1) Any equipment placed on the seabed shall be designed to allow its recovery and removal upon abandonment of leasehold activities.

(2) Disposal of equipment, cables, chains, containers, or other materials into the ocean is prohibited.

(3) Materials, equipment, tools, containers, and other items used on the OCS which are of such shape or configuration that they are likely to snag or damage fishing devices shall be handled and marked as follows:

(i) All loose materials, small tools, and other small objects shall be kept in a suitable storage area or a marked container when not in use or in a marked container before transport over OCS waters;

(ii) All cable, chain, or wire segments shall be recovered after use and securely stored;

(iii) Skid-mounted equipment, portable containers, spools or reels, and drums shall be marked with the owner's name prior to use or transport over OCS waters; and

(iv) All markings must clearly identify the owner and must be durable enough to resist the effects of the environmental conditions to which they are exposed.

(4) Any equipment or material described in paragraphs (h)(2), (h)(3)(ii), and (h)(3)(iii) of this section that is lost overboard shall be recorded on the daily operations report of the facility and reported to the Director and to the U.S. Coast Guard.

(i) Any bulk sampling or testing that is necessary to be conducted prior to submission of a Mining Plan shall be in accordance with an approved Testing Plan. The sale of any OCS minerals acquired under an approved Testing Plan shall be subject to the payment of the royalty specified in the lease to the United States.

(j) Installations and structures. (1) The lessee shall design, fabricate, install, use, inspect, and maintain all installations and structures including platforms on the OCS to assure the structural integrity of all installations and structures for the safe conduct of exploration, testing, mining, and processing activities considering the specific environmental conditions at the location of the installation of structure.

(2) All fixed or bottom-founded platforms or other structures, e.g., artificial islands (platforms) shall be designed, fabricated, installed, inspected, and maintained in accordance with the provisions of Part 250, Subpart I, of this title.

(k) The lessee shall not produce any OCS mineral until the method of measurement and the procedures for product valuation have been instituted in accordance with the approved Testing or Mining Plan. The lessee shall enter the weight or quantity and quality

of each mineral produced with § 282.31 of this title.

(l) The lessee shall conduct OCS mineral processing operations in accordance with the approved Testing or Mining Plan and use due diligence in the reduction, concentration, or separation of mineral substances by mechanical or chemical processes, by evaporation, or other means, so that the percentage of concentrates or other mineral substances are recovered in accordance with the practices approved in the Testing or Mining Plan.

(m) Disposal of waste materials. No material shall be discharged or disposed of except in accordance with the approved disposal practice and procedures contained in the approved Delineation, Testing, or Mining Plan.

§ 282.28 Environmental protection measures.

(a) Exploration, testing, development, production, and processing activities proposed to be conducted under a lease will only be approved by the Director upon the determination that the adverse impacts of the proposed activities can be avoided, minimized, or otherwise mitigated. The Director shall take into account the information contained in the sale-specific environmental evaluation prepared in association with the lease offering as well as the site- and operation-specific environmental evaluations prepared in association with the review and evaluation of the approved Delineation, Testing, or Mining Plan.

(b) If the baseline data available are judged by the Director to be inadequate to support an environmental evaluation of a proposed Delineation, Testing, or Mining Plan, the Director may require the lessee to collect additional environmental baseline data prior to the approval of the activities proposed.

(c)(1) The lessee shall monitor activities in a manner that develops the data and information necessary to enable the Director to assess the impacts of exploration, testing, mining, and processing activities on the environment on and off the lease; develop and evaluate methods for mitigating adverse environmental effects; validate assessments made in previous environmental evaluations; and ensure compliance with lease and other requirements for the protection of the environment.

(2) Monitoring of environmental effects shall include determination of the spatial and temporal environmental changes induced by the exploration, testing, development, production, and processing activities on the flora and

fauna of the sea surface, the water column, and/or the seafloor.

(3) The Director may place observers onboard exploration, testing, mining, and processing vessels; installations; or structures to ensure that the provisions of the lease, the approved plan, and these regulations are followed and to evaluate the effectiveness of the approved monitoring and mitigating practices and procedures in protecting the environment.

(4) The Director may order or the lessee may request a modification of the approved monitoring program prior to the startup of testing activities or commercial-scale recovery, and at other appropriate times as necessary, to reflect accurately the proposed operations or to incorporate the results of recent research or improved monitoring techniques.

(5) When prototype test mining is proposed, the lessee shall include a monitoring strategy for assessing the impacts of the testing activities and for developing a strategy for monitoring commercial-scale recovery and mitigating the impacts of commercial-scale recovery more effectively. At a minimum, the proposed monitoring activities shall address specific concerns expressed in the lease-sale environmental analysis.

(6) When required, the monitoring plan shall specify:

- (i) The sampling techniques and procedures to be used to acquire the needed data and information;
- (ii) The format to be used in analysis and presentation of the data and information;
- (iii) The equipment, techniques, and procedures to be used in carrying out the monitoring program; and
- (iv) The name and qualifications of person(s) designated to be responsible for carrying out the environmental monitoring.

(d) Lessees shall develop and conduct their operations in a manner designed to avoid, minimize, or otherwise mitigate environmental impacts and to demonstrate the effectiveness of efforts to that end. Based upon results of the monitoring program, the Director may specify particular procedures for mitigating environmental impacts.

(e) In the event that equipment or procedural failure might result in significant additional damage to the environment, the lessee shall submit a Contingency Plan which specifies the procedures to be followed to institute corrective actions in response to such a failure and to minimize adverse impacts on the environment. Such procedures shall be designed for the site and mining

activities described in the approved Delineation, Testing, or Mining Plan.

§ 282.29 Report and records.

(a) A report of the amount and value of each OCS mineral produced from each lease shall be made by the payor for the lease for each calendar month, beginning with the month in which approved testing, development, or production activities are initiated and shall be filed in duplicate with the Director on or before the 20th day of the succeeding month, unless an extension of time for the filing of such report is granted by the Director. The report shall disclose accurately and in detail all operations conducted during each month and present a general summary of the status of leasehold activities. The report shall be submitted each month until the lease is terminated or relinquished unless the Director authorizes omission of the report during an approved suspension of production. The report shall show for each calendar month the location of each mining and processing activity; the number of days operations were conducted; the identity, quantity, quality, and value of each OCS mineral produced, sold, and disposed of; and other information as may be required by the Director.

(b) The lessee shall submit a status report on exploration and/or testing activities under an approved Delineation or Testing Plan to the Director within 30 days of the close of each calendar quarter which shall include:

- (1) A summary of activities conducted;
- (2) A listing of all geophysical and geochemical data acquired and developed such as acoustic or seismic profiling records;
- (3) A map showing location of holes drilled and where bottom samples were taken; and
- (4) Identification of samples analyzed.

(c) Each lessee shall submit to the Director a report of exploration and/or testing activities within 3 months after the completion of operations. The final report of exploration and/or testing activities conducted on the lease shall include:

- (1) A description of work performed;
- (2) Charts, maps, or plats depicting the area and leases in which activities were conducted specifically identifying the lines of geophysical traverses and/or the locations where geological activity was conducted and/or the locations of other exploration and testing activities;
- (3) The dates on which the actual operations were performed;
- (4) A narrative summary of any mineral occurrences; environmental

hazards; and effects of the activities on the environment, aquatic life, archaeological resources, or other uses and users of the area in which the activities were conducted;

(5) Such other descriptions of the activities conducted as may be specified by the Director; and

(6) Records of all samples from core drilling or other tests made on the lease. The records shall be in such form that the location and direction of the samples can be accurately located on a map. The records shall include logs of all strata penetrated and conditions encountered, such as minerals, water, gas, or unusual conditions, and copies of analyses of all samples analyzed.

(d) The lessee shall report the results of environmental monitoring activities required in § 282.28 of this part and shall submit such other environmental data as the Director may require to conform with the requirements of these regulations.

(e)(1) All maps shall be appropriately marked with reference to official lease boundaries and elevations marked with reference to sea level. When required by the Director, vertical projections and cross sections shall accompany plan views. The maps shall be kept current and submitted to the Director annually, or more often when required by the Director. The accuracy of maps furnished shall be certified by a professional engineer or land surveyor.

(2) The lessee shall prepare such maps of the leased lands as are necessary to show the geological conditions as determined from G&G surveys, bottom sampling, drill holes, trenching, dredging, or mining. All excavations shall be shown in such manner that the volume of OCS minerals produced during a royalty period can be accurately ascertained.

(f) Any lessee who acquires rock, mineral, and core samples under a lease shall keep a representative split of each geological sample and a quarter longitudinal segment of each core for 5 years during which time the samples shall be available for inspection at the convenience of the Director who may take cuts of such cores, cuttings, and samples.

(g)(1) The lessee shall keep all original data and information available for inspection or duplication, by the Director at the expense of the lessor, as long as the lease continues in force. Should the lessee choose to dispose of original data and information once the lease has expired, said data and information shall be offered to the lessor free of costs and shall, if accepted, become the property of the lessor.

(2) Navigation tapes showing the location(s) where samples were taken and test drilling conducted shall be retained for as long as the lease continues in force.

(h) Lessees shall maintain records in which will be kept an accurate account of all ore and rock mined; all ore put through a mill; all mineral products produced; all ore and mineral products sold and to whom sold; and the inventory weight, assay value, moisture content, base sales price, dates, penalties, and price received. The percentage of each of the mineral products recovered and the percentages lost shall be shown. The records associated with activities on a lease shall be available to the Director for auditing.

(i) When special forms or reports other than those referred to in the regulations in this part may be necessary, instructions for the filing of such forms or reports will be given by the Director.

§ 282.30 Right of use and easement.

(a) A right of use and easement that includes any area subject to a lease issued or maintained under the Act shall be granted only after the lessee has been notified by the requestor and afforded the opportunity to comment on the request. A holder of a right under a right of use and easement shall exercise that right in accordance with the requirements of the regulations in this part. A right of use and easement shall be exercised only in a manner which does not interfere unreasonably with operations of any lessee on its lease.

(b) Once a right of use and easement has been exercised, the right shall continue, beyond the termination of any lease on which it may be situated, as long as it is demonstrated to the Director that the right of use and easement is being exercised by the holder of the right and that the right of use and easement continues to serve the purpose specified in the grant. If the right of use and easement extends beyond the termination of any lease on which the right may be situated or if it is situated on an unleased portion of the OCS, the rights of all subsequent lessees shall be subject to such right. Upon termination of a right of use and easement, the holder of the right shall abandon the premises in the same manner that a lessee abandons activities on a lease to the satisfaction of the Director.

§ 282.31 Suspension of production or other operations.

A lessee may submit a request for a suspension of production or other operations. The request shall include

justification for granting the requesting suspension, a schedule of work leading to the initiation or restoration of production or other operations, and any other information the Director may require.

Subpart D—Payments

§ 282.40 Bonds.

(a) Pursuant to the requirements for a bond in § 281.33 of this title, prior to the commencement of any activity on a lease, the lessee shall submit a surety or personal bond to cover the lessee's royalty and other obligations under the lease as specified in this section.

(b) All bonds furnished by a lessee or operator shall be in a form or on a form approved by the Director. A single copy of the required form is to be executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety.

(c) Only those surety bonds issued by qualified surety companies approved by the Department of the Treasury shall be accepted. (See Department of Treasury Circular No. 570 and any supplemental or replacement circulars.)

(d) Personal bonds shall be accompanied by a cashier's check, certified check, or negotiable U.S. Treasury bonds of an equal value to the amount specified in the bond. Negotiable Treasury bonds shall be accompanied by a proper conveyance of full authority to the Director to sell such securities in case of default in the performance of the terms and conditions of the lease.

(e) A bond in the minimum amount of \$50,000 to cover the lessee's obligations under the lease shall be submitted prior to the commencement of any activity on a leasehold. A \$50,000 bond shall not be required on a lease if the lessee already maintains or furnishes a \$300,000 bond conditioned on compliance with the terms of leases for OCS minerals other than oil, gas, and sulphur held by the lessee on the OCS for the area in which the lease is located. Prior to approval of a Delineation, Testing, or Mining Plan the bond amount shall be adjusted, if appropriate, to cover the operations and activities described in the proposed plan.

(f) For the purposes of this section there are four areas:

- (1) The Gulf of Mexico;
- (2) The area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii;
- (3) The area offshore the Coast of Alaska; and
- (4) The area offshore the Atlantic Coast.

(g) A separate bond shall be required for each area. An operator's bond in the same amount may be substituted at any time for the lessee's bond.

(h) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

(i) After default, the principal shall, within 6 months after notice or within such shorter period as may be fixed by the Director, either post a new bond or increase the existing bond to the amount previously held. In lieu thereof, the principle may, within that time, file separate or substitute bonds for each lease. Failure to meet these requirements may result in a suspension

of operations including production on leases covered by such bonds.

(j) The Director shall not consent to termination of the period of liability of any bond unless an acceptable alternative bond has been filed or until all the terms and conditions of the lease covered by the bond have been met.

§ 282.41 Method of royalty calculation.

In the event that the provisions of royalty management regulations do not apply to the specific commodities produced under regulations in this part, the lessee shall comply with procedures specified in the leasing notice.

§ 282.42 Payments.

Rentals, royalties, and other payments due the Federal Government on leases

for OCS minerals shall be paid and reports submitted by the payor for a lease in accordance with § 281.26 of this title.

Subpart E—Appeals

§ 282.50 Appeals.

Orders or decisions issued under the regulations in this part may be appealed in accordance with the provisions of Part 290 of this title. The filing of an appeal with the Director shall not suspend the requirement for compliance with an order or decision other than the payment of a civil penalty.

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Thursday
August 18, 1988

Part IV

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Update of Ambulatory
Surgical Center Payment Rates; Notice of
Proposed Rates

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-460-PN]

Medicare Program; Update of Ambulatory Surgical Center Payment Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of proposed rates.

SUMMARY: This proposed notice sets forth the updated payment rates for ambulatory surgical center services. As required by section 1833(i)(2)(A) of the Social Security Act, these revised rates would be effective July 1, 1988.

We are proposing to refine the methodology used to determine the payment rates and base the rates on the most recent survey data collected from ambulatory surgical centers. In addition, we would compute the payment rates using the HCFA hospital wage index. We are also proposing to incorporate the payment for intraocular lens implanted during cataract surgery into the facility rate as required by section 4063(b) of the Omnibus Budget Reconciliation Act of 1987, which was enacted on December 22, 1987. Finally, we are proposing changes regarding the payment policy for surgical procedures that are terminated due to medical complications that increase the surgical risk to the patient.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 17, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-460-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC.
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-460-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday

through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Vivian Braxton, (301) 966-4571.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that, under Part B of Medicare (Supplementary Medical Insurance), benefits include services furnished in connection with those surgical procedures that, under section 1833(i)(1)(A) of the Act, are specified by the Secretary and that are performed in an ambulatory surgical center (ASC). As defined in 42 CFR 416.2, an ASC is any distinct entity that—

- Operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization;
- Has an agreement with HCFA to participate in the Medicare program as an ASC; and
- Meets specified conditions for coverage set forth in Subpart B of 42 CFR Part 416.

Generally, there are two elements in the total charge for a surgical procedure—a charge for the physician's professional services for performing the procedure, and a charge for the facility's services (such as use of an operating room). Before the enactment of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), if the physician agreed to accept assignment, the physician's professional services furnished in connection with these surgical procedures when performed in an ambulatory setting were paid at 100 percent of the reasonable charge (or 100 percent of the reasonable cost in the case of a health maintenance organization reimbursed under section 1876 of the Act) (42 CFR 416.110). If the physician did not accept assignment for these services, payment was made at 80 percent of the reasonable charge. The changes made to this policy by Pub. L. 100-203 are discussed below.

Section 1833(i)(2)(A) of the Act authorizes the Secretary to pay ASCs a prospectively determined rate for facility services associated with covered surgical procedures meeting the criteria specified under section 1833(i)(1)(A) of the Act. Facility services furnished after June 30, 1987 are subject to the usual Medicare Part B 20 percent coinsurance and deductible requirements. Therefore, participating ASCs are paid 80 percent of the prospectively determined rate. The rate is intended to represent the Secretary's estimate of a fair fee that takes into account the cost of facility services provided in conjunction with a

procedure. Currently, the rate is a standard overhead amount that does not include physicians' fees and other medical items and services (for example, prosthetic devices) for which separate payment may be authorized under other provisions of the Medicare program.

The Report of the Senate Committee on Finance accompanying section 934 of Pub. L. 96-499 (the legislation that added the ASC benefit to the Medicare program) states, "The overhead factor is expected to be calculated on a prospective basis * * * utilizing sample survey and similar techniques to develop reasonable estimated overhead allowances for each of the listed procedures * * *." (See S. Rep. 471, 96th Cong., 1st Sess. 35 (1979).) Section 416.140 of the regulations provides that a survey will be conducted periodically. In addition, section 1833(i)(2)(A)(ii) of the Act requires that the ASC facility payment rate must result in substantially less Medicare expenditure than would have been paid if the same procedure was performed on an inpatient basis.

Currently, all covered ASC surgical procedures are classified into four separate payment groups for which four separate ASC payment rates apply. When two or more procedures are performed in the same operation, payment to the ASC is at the full rate for the procedure classified in the highest payment group and 50 percent of the rate for each of the other procedures (§ 416.120(c)(2)), subject to deductible and coinsurance amounts. Freestanding facilities and hospital-operated ASCs electing to participate under the ASC benefit are paid at the same rate.

On August 5, 1982, we issued two documents in the Federal Register to implement the ASC benefit. The first was a final rule to add to the benefits available under Part B of Medicare the services associated with certain surgical procedures provided in an ASC setting. (See 47 FR 34082.) In the second document, which was a final notice, the Secretary, after consulting with appropriate medical organizations, specified a list of surgical procedures that may be performed safely on an ambulatory basis in an ASC. (See 47 FR 34099.) Subsequently, we have revised the list of covered ASC procedures in an April 21, 1987 final notice (52 FR 13176), and proposed further revision to that list in an August 11, 1987 proposed notice (52 FR 29729). Corrections to the latter notice were published on September 15, 1987 (52 FR 34848).

In March 1983, we issued implementing instructions at sections

2266.3 and 5243.3 of the Medicare Carriers Manual (HCFA Pub. 14-3). Section 2266.3 restates the list of covered procedures published in the August 5, 1982 final notice using the specific procedure codes from the Physicians' Current Procedural Terminology, Fourth Edition (commonly referred to as CPT-4). Since the list of approximately 100 procedure codes published in the August 5, 1982 final notice generally represented two or more distinct procedures, the list as restated in specific CPT-4 codes included more than 400 procedure codes. In June 1987, the list of CPT-4 codes in the Medicare Carriers Manual was revised to include the revisions set forth in the April 21, 1987 final notice. The list now includes 1535 procedure codes.

Section 5243.3 defines the criteria for payment of multiple covered procedures performed in the same operative session. With one exception, all of the covered procedures listed in section 2266.3 and designated by a single CPT-4 code are considered single procedures. The exception, insertion of intraocular lens prosthesis with cataract extraction (initially coded as procedure code 66980 and subsequently recoded as procedure codes 66983 and 66984 to distinguish an intracapsular cataract extraction from an extracapsular extraction, respectively), is treated as two separate procedures. The manual instructs the carriers to pay this procedure at one and one-half times the applicable Group 4 payment rate.

II. Notice of Updated Payment Rates Effective July 1, 1987

A. Introduction

In a June 1, 1987 notice with comment period (52 FR 20466), we updated the ASC facility payment rates for the first time since they were first published in the August 5, 1982 final rule. The updated rates were based on the projected increase (18.7 percent) in the consumer price index for all urban consumers (CPI-U) from September 1982 (the effective date of the initial ASC payment rates) to January 1988 (the midpoint of the 12-month period beginning July 1, 1987). We used Data Resources, Incorporated (DRI) forecasts for the fourth quarter calendar year 1987 and the first quarter calendar year 1988 index levels to project the January 1988 index level.

The ASC facility services payment rates that were effective July 1, 1987 are as follows:

- Group 1—\$274
- Group 2—\$326
- Group 3—\$351
- Group 4—\$399

B. Discussion of Comments

In response to the notice, we received 75 items of correspondence. The majority of the comments were submitted by individuals who owned or operated ASCs. All of the comments dealt with two general issues, as discussed below.

Comment: A number of commenters objected to the use of an economic index to update the facility payment rates because they believed that the original rates were inadequate and were based on limited and obsolete data. They stated that the update should have been based on the ASC survey data collected in 1986.

Response: We acknowledge the limitations of our original data base and agree that it would have been preferable to update the facility rates based on the new survey data rather than on an economic index. However, as explained in the June 1987 notice (52 FR 20467), we were unable to complete our analysis of the survey data in time to meet the statutory deadline of July 1, 1987 because of delays beyond our control in completing audits of 97 sample facilities. (Section 1833(i)(2)(A) of the Act requires that the payment rates be updated not later than July 1, 1987, and annually thereafter.) Due to discrepancies observed in the unaudited data, it was imperative that the audits be completed before the results were incorporated into an updated methodology.

Comment: Commenters argued that the hospital market basket index rather than the CPI-U should have been used to account for inflation when updating the facility payment rates for July 1, 1987. They believed that the hospital market basket index is more appropriate because of the similarity between costs incurred for surgical services offered by ASCs on an outpatient basis and costs incurred for surgery performed by hospitals on an inpatient basis.

Response: After carefully considering all alternatives, we updated the payment rates using the CPI-U because it is a generalized index that reflects increases in the prices paid for a representative market basket of goods and services. Congress has mandated the use of the CPI-U for the Medicare clinical diagnostic laboratory fee schedule, and it has also been used to limit increases in allowable charges for nonphysician services.

The hospital market basket index is a specialized index specifically related to goods and services commonly associated with hospital inpatient costs. Notwithstanding similarities in surgical costs incurred by ASCs and hospitals, the mix of goods and services differ

substantially. Because of this difference, we believe that use of the hospital market basket index would have distorted the ASC payment rates.

III. New Legislation

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) was enacted. This new legislation includes the following provisions that affect payment for ASC services:

- Section 4084 of Pub. L. 100-203 amended section 1833(1) of the Act to add ASCs to the list of entities that can bill and be paid separately for the services of certified registered nurse anesthetists (CRNAs) who are either employed by the ASC or who have entered into a contractual arrangement to perform services for the ASC. This change applies to services furnished on or after January 1, 1989. We intend to implement this provision in a separate rulemaking document. For purposes of this proposed notice, we note our intention to continue the current practice of incorporating the costs associated with CRNA services furnished by CRNAs who are either employed directly by the ASC or who have a contractual arrangement with the ASC into the facility payment rate.

- Section 4054 of Pub. L. 100-203 limited section 1833(1) of the Act to repeal, in effect, the waiver of Medicare Part B coinsurance and deductible requirements for physicians' services furnished in connection with an ASC covered procedure effective April 1, 1988. As of that date, physicians' services are paid at 80 percent of reasonable charges and beneficiaries are responsible for a 20 percent coinsurance and the Medicare Part B deductible.

- Section 4063(b) of Pub. L. 100-203 amended section 1833(i)(2)(A) of the Act to mandate that payment for an intraocular lens (IOL) implant performed in an ASC in conjunction with cataract surgery be included in the facility payment rate effective with services furnished on or after July 1, 1988. It further requires that the payment amount for the IOL be reasonable and related to the cost of acquiring certain types of lenses.

IV. Provisions of the Proposed Notice

A. Methodology for Ratesetting

The payment methodology published in the August 5, 1982 final rule established four facility payment rate groups based on 1979 and 1980 cost and charge information obtained from approximately 40 ASCs. Using these

data, we first developed an indexing method for ranking each covered procedure based on a facility's charge for an individual procedure as compared to its average charge for all procedures offered. By indexing procedures, we were able to determine the value a particular facility places on a covered procedure in relation to other procedures it offers.

We calculated the average of the index numbers across all facilities for each procedure and then arrayed the procedures by this national average index. After determining the national average index value for each procedure, we classified the covered procedures into four groups by that value. We used interval points to establish group breaking points as follows:

- Group 1—index less than .90
- Group 2—index between .90 and 1.00
- Group 3—index between 1.01 and 1.10
- Group 4—index greater than 1.10

The index value was used exclusively for classification purposes. For determining the actual payment rate of a group, we used actual charge and cost information reported by the facilities. To establish the payment rates for each of the four groups, we used a five-step procedure, as described below.

Step 1—To remove the effects of area wage differences, we adjusted (that is, deflated) the actual charges for each procedure using the hospital wage index published on June 30, 1981 (46 FR 33641). Based on our analysis of submitted financial reports, we determined that, on the average, the labor portion is approximately one-third of the charge for each procedure. Assuming facilities' charges to be similarly related to costs, we adjusted one-third of the charge for each procedure by the wage index.

Step 2—We then calculated the average charge-per-procedure for each covered procedure by summing the wage-adjusted charge for all facilities in our data base that furnished a given procedure and dividing that result by the number of ASCs performing the same procedure.

Step 3—The procedures within each payment group were arrayed by the average charge. We identified the 60th percentile of average charges within the four payment groups.

Step 4—Based on a review of financial statements submitted by ASCs, we determined a cost-to-charge ratio of 0.9. In order to make Medicare payments to ASCs cost-related as required under section 1833(i)(2) of the Act, we multiplied the average charge at the 60th percentile by 0.9.

Step 5—We further adjusted the average charge at the 60th percentile of

each payment group to account for inflation occurring between 1980 and the effective date of the rates (September 7, 1982). The four payment group rates were set at the inflation-adjusted amounts.

As stated, above, we applied an across-the-board inflation factor to update the 1982 payment rates for services furnished on or after July 1, 1987.

For purposes of computing the ASC payment rates for services furnished on or after July 1, 1988, we are proposing to change our ratesetting methodology as described below.

1. Use of the Latest Survey Data

The payment rates proposed in this notice were developed based on the most recent survey data available on facility overhead expenses and procedure-specific charges. The data contained in our new data base were gathered through a survey of the industry conducted between May and August 1986. The survey instrument, the Ambulatory Surgical Center Payment Rate Survey (Form HCFA-452), was mailed in May 1986 to all ASCs (approximately 500) that were identified as participating facilities during March 1986. Facilities were required to complete Form HCFA-452 by July 10, 1986. Due to difficulties encountered by a large number of facilities in complying with the deadline, the due date was extended for at least 30 days upon request.

Of the approximately 500 facilities included in our mailing, about 470 of the ASCs completed Form HCFA-452. This statistic excludes 12 ASCs that had terminated their participation prior to receipt of the survey form.

The survey gathered information specific to total charges (Medicare and non-Medicare) on each procedure performed and the total number of times the procedure was performed as well as aggregate charges and cost data for each ASC's most recently completed fiscal year. The survey also obtained information on the number of Medicare patients and total patients treated by the ASC.

In preparing the 470 survey forms for data extraction, we identified forms from 333 ASCs that could potentially be used to develop the proposed rates included in this notice. We excluded those forms from ASCs that—

- Had been in operation for less than six months;
- Could not separate operation of the ASC from operation of other entities; or
- Were unable to capture charge data from their recordkeeping systems in the manner requested.

The ASCs represented in our data base are located largely in urban areas (87 percent) and are overwhelmingly freestanding facilities (98 percent). Summary data on the national ASC survey are available upon request of HCFA.

These survey data represent a significantly broader data base than the one used in setting the current ASC rates. The new survey data base includes data from calendar years 1984, 1985, and 1986. In addition, this data base contains charge information on more than 1200 of the 1535 covered procedures.

Our initial analysis of the survey data indicated that there were flaws in the data, which we have attributed to ASCs' unfamiliarity with the new survey form and inconsistencies among ASCs in their recordkeeping systems. Preliminary review of the survey form responses indicated several problem areas (for example, underreporting of aggregate charges and commingling of receipts from a physician's private practice with the ASC operation) that prompted us to conduct a nationwide audit of a sample of ASCs for the purpose of validating the survey responses and developing from the audited data statistical measures such as the cost-to-charge ratio needed to make payments cost-related.

2. Sample Design and Audit

a. Sample Design. As discussed above, we conducted national audits of a sample of the survey data. To determine the appropriate sample size required to apply the audit findings to the survey responses obtained from a total population of 333 ASCs, we approximated the variance of audited costs, the variance of audited charges, and the correlation between audited costs and audited charges for a randomly selected sample of 50 unaudited Form HCFA-452s. Reported revenues were used as a proxy for charges and reported total expenses were used for costs. After reviewing a variety of precision levels with a given sampling error percentage, we determined that a random sample of 100 facilities would be appropriate to estimate audit results with adequate precision for ratesetting purposes.

To draw the sample, we identified the 333 ASCs solely by their six-digit Medicare provider number. These numbers were listed in numerical sequence. Sample ASCs were then randomly selected using appropriate statistical procedures. Of the 100 ASCs selected for audit only 97 ASCs were actually audited because 3 incorrect

provider numbers were included in the sample drawing. However, we used data from only 90 facilities because, of the 97 audited ASCs, 3 ASCs failed to report their charges correctly and 4 ASCs failed to report their Medicare and total patient statistics properly. Of the 97 ASCs actually audited, 20 percent were located in California, 9 percent in Texas, 8 percent in Arizona, and 5 percent in Florida.

b. Audit Results. The nationwide audit was conducted from November 1986 through March 1987 by the Medicare fiscal intermediaries. Although ASCs are serviced by Medicare carriers, we had fiscal intermediaries conduct the audits because we believe their audit capabilities are better suited to conduct this type of activity. The home offices of ASC chains included in the sample were audited by the Office of the Inspector General (OIG). We instructed the auditors to determine reasonable costs of the audited facilities in accordance with Medicare principles of reimbursement.

Audits resulted in net adjustments that reduced reported costs by 9.1 percent and increased reported aggregated charges by 6.1 percent. The audit adjustments brought aggregate charges more in line with total revenue. The major cost reductions occurred in plant and property, equipment, laboratory, and other or miscellaneous costs such as travel, education, and malpractice insurance premiums. Prostheses and durable medical equipment (DME) costs were adjusted upward by nearly 13 percent while salary and supply costs were increased 1.5 and 0.8 percent, respectively.

After the audits were completed, we made the following adjustments to the audited data:

- As mentioned above, we eliminated three facilities from the audit sample because their charges were reported improperly. We eliminated four other facilities because they either had no Medicare patients or incorrectly reported their patient statistics. Inclusion of these ASCs would have distorted the computed cost-to-charge ratio.

- We eliminated any excessive compensation paid to an administrator or to a medical director based on our audited analysis of administrative staff expenses and owner's compensation. Our analysis showed that the average salary for one full-time administrator or medical director in an ASC is \$40,000. Therefore, we adjusted owner's compensation for nine audited facilities where the amount paid was in excess of \$40,000 and was not related to duties performed.

- We determined that charges were not reported for prostheses and DME furnished by the ASCs even though expenses associated with these items were reflected in the cost data. Under the ASC benefit, payment for prostheses and DME is separate from the facility payment rate. Therefore, when computing the cost-to-charge ratio, we excluded those audited costs.

After completing these adjustments, we then performed the following calculations on the audited data:

- We summed each facility's salary and fringe benefits costs including owner's compensation and contractual personnel costs in order to derive the total labor-related costs for the sample.

- We summed each facility's net total costs.

- We then divided the total labor-related costs by the net total costs to derive the average labor-related percentage. The results were used to apportion the per procedure charges for the total population into their labor-related (34.45 percent) and nonlabor-related (65.55 percent) components prior to adjusting for geographic wage differences.

- We multiplied the net total costs for the facility by its ratio of Medicare patients to total patients to determine the portion of its costs attributable to Medicare patients. Similarly, we multiplied each facility's aggregate charges by its ratio of Medicare patients to total patients to determine the portion of its charges attributable to Medicare patients. We then summed each facility's Medicare costs and divided by the sum of the Medicare aggregate charges. We arrayed the resulting ratios in descending order and calculated the median Medicare cost-to-charge ratio for the sample (0.776). We then used the cost-to-charge ratio to relate each per procedure charge to cost as described below. Because the median is unaffected by extreme variations in individual facility costs and charges, we believe that use of a median rather than a mean cost-to-charge ratio is a distinct improvement over the current methodology.

3. Use of an Inflation Adjustment

The initial ASC rates that were determined in 1982 were adjusted for inflation. In addition, when we updated the rates for services furnished on or after July 1, 1987, we used the CPI-U and DRI forecasts to adjust the four basic group rates to account for inflation. This adjustment resulted in an across-the-board rate of increase and we used this approach solely to establish revised rates in the absence of a new data base. As a refinement to our ratesetting

methodology, we are proposing to continue to use the CPI-U and DRI forecasts to construct inflation factors to adjust for the effects of changing price levels on ASC costs. The annual rates of increase used to derive the proposed inflation factors are shown in Table I below.

In the absence of an ASC-specific market basket, we believe that use of the CPI-U, a generalized index, is appropriate to reflect the impact of actual and projected changes in wages and prices on ASC costs occurring between the periods represented in our data base and the period covered by the revised rates. Unlike our initial data base which consisted almost entirely of data from 1980, our new data base contains survey data that are based on several calendar years of data (that is, 1984, 1985, and 1986). We are proposing this approach to ensure that the rates based on these reporting years include reasonably fair estimates of inflation that has occurred since the period covered by the survey.

We would apply the inflation adjustment on a facility by facility basis to the per procedure charge extracted from the survey forms to account for historical and projected price changes occurring between the midpoints of the periods included in our data base and the midpoint of the 12-month period to which the new rates would apply (December 31, 1988).

The annual percentage increases that were used to compute the proposed ASC rates are as follows:

TABLE I

Calendar year:	Percent increase ¹ in the CPI-U
1984.....	4.3
1985.....	3.6
1986.....	1.9
1987.....	3.8
1988.....	4.6

¹ DRI fourth quarter 1987 update.

4. Deflation by Wage Index

After adjusting charges for inflation, we separated each ASC's per procedure charge into its labor-related and nonlabor-related portions. The labor-related portion (34.45 percent) was determined by calculating the average percentage of audited labor-related costs for the sample of 90 facilities. We defined labor-related costs to include salary, fringe benefits, contractual personnel expenses and owner's

compensation. We then divided the labor-related component of the per procedure charge by the wage index applicable to the ASC's location to derive a standardized labor-related portion of the charge. (The wage index is set forth in Addendum C to this proposed rule.) The effect of this calculation is to remove any variation in ASC per procedure charges that may be due solely to geographical differences in wages. We would then add the adjusted labor-related portion of the charge to the nonlabor-related portion prior to arraying and determining the weighted median charges.

5. Wage Index

Since the initial publication of the ASC facility payment rates in the August 5, 1982 final rule, we have used the 1981 Bureau of Labor Statistics' (BLS) wage index to adjust the payment rates for area wage variation. This wage index was published initially in the Federal Register on June 30, 1981 (46 FR 33637) and subsequently republished on November 26, 1984 (49 FR 46495). The wage index was constructed from 1979 hospital wage and employment data obtained from the BLS ES 202 Employment, Wages, and Contributions file for hospital workers, a standard reporting category. The BLS ES 202 system compiles information on employment and total wages for workers covered by unemployment insurance.

Since initial use of the BLS wage index, we have been aware of certain limitations in the BLS data, especially with regard to the lack of information on hours of employment or full-time equivalents. The BLS data provide information only on the number of workers employed at a hospital and their aggregate salaries. As a result, area wage indexes produced from these data do not distinguish between part-time and full time employees. Although we recognized these shortcomings, we used the BLS wage index in calculating the ASC facility payment rates because we believed that the advantage of using the best national data available outweighed any disadvantages.

It is important to note that when the ASC rates were established in 1982, data were not available to construct an ASC-specific wage index. Fewer than 100 ASCs were operational at that time. Therefore, we adopted the BLS hospital wage index as the best available proxy for adjusting area wage levels. While the 1986 ASC survey instrument (Form HCFA-452) included limited information on salaries and employment, such information was not presented in sufficient detail to permit the

construction of an ASC industry-specific wage index from only these survey data. In addition, a significant proportion of ASCs failed to report or erroneously reported either the salary or full-time equivalent data or both.

Since we are unable to construct an ASC industry-specific wage index at this time, we are proposing to adopt the HCFA hospital wage index for use in calculating ASC payment rates. The HCFA hospital wage index was constructed in an effort to overcome the limitations of the BLS data with regard to full-time and part-time employment. We conducted a survey in 1944 that provided for the extraction of specific hospital salary and fringe benefit data from the Medicare cost report, and for the extraction from hospital records of data on paid hours worked. A complete description of the survey, as well as the survey results, can be found in the following Federal Register documents:

- The proposed rule published on July 3, 1984 (49 FR 27439).
- The final rule published on August 31, 1984 (49 FR 34764).
- The June 10, 1985 proposed rule (50 FR 24375).
- The September 3, 1985 final rule (50 FR 35661).

The HCFA wage index, which is currently used to set the inpatient hospital prospective payment system rates, the skilled nursing facility (SNF) cost limits, and the home health agency (HHA) cost limits, overcomes the limitations inherent in the BLS index with respect to part-time employment. The HCFA index, which is based on gross salaries and wages, measures the relative difference from area to area in gross average hourly hospital wages, that is, the wages paid to all hospital employees. Because the index is based on the average hourly wage paid in each urban or rural area, it accounts for regional differences in part-time employment.

We are proposing to adopt the HCFA wage index that was published in the September 1, 1987 hospital prospective payment final rule (52 FR 33095) (set forth as Addendum C of this document) for use in calculating the ASC facility payment rates that will be effective July 1, 1988. We believe that the use of this index would result in ASC facility payment rates that reflect more accurately the prevailing economic environment in which ASCs are located.

6. Urban and Rural Classifications

We currently use Standard Metropolitan Statistical Areas (SMSAs and non-SMSAs) and, in New England, New England County Metropolitan Areas (NECMAs and non-NECMAs) to

classify urban and rural locations for purposes of applying the wage index adjustment to ASC facility payment rates. With few exceptions, urban locales consist of those counties that comprise either an SMSA or NECMA as defined in 1981 by the Executive Office of Management and Budget (EOMB). Rural areas consist of those counties within a State that lie outside an SMSA or NECMA. However, on June 30, 1983, EOMB began using Metropolitan Statistical Areas (MSAs) in lieu of SMSAs. Therefore, we are proposing to use the MSA designations for ASC ratesetting purposes for the following reasons:

- It is the classification system currently used by EOMB.
- It is the classification system applied to hospitals subject to the prospective payment system and to SNFs and HHAs for determining payments as well as in calculating their wage indexes.
- It reflects 1980 census changes in urban and rural areas.

MSAs are designated and defined following a set of standards prepared by the Federal Committee on MSAs, which advises EOMB on metropolitan area definitions. Under these standards, an area qualifies for recognition as an MSA if—

- A city of at least 50,000 population is located in the area; or
- It is an urbanized area of at least 50,000 population with a total metropolitan population of at least 100,000.

In addition to a county containing a main city, an MSA may also include additional counties that have close economic and social ties to the central county. MSAs are defined in terms of constituent counties or county equivalents, except in the six New England States. In most cases, there is little difference between the SMSA designations and the MSA designations. The MSA designations are shown in Addendum C of this document with their applicable wage index values.

Further, the HCFA wage index presented in Addendum C incorporates exceptions to the MSA classification system for certain New England counties. These exceptions, authorized under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98-21), require that any hospital located in New England be classified as being in an urban area if the hospital was classified as being in an urban area under the classification system in effect in 1979. This provision is intended to ensure equitable treatment under the hospital prospective payment system.

Under this authority, the following counties have been deemed to be urban areas:

- Litchfield County, CT in the Hartford-New Britain-Middleton-Bristol, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Manchester-Nashua, NH MSA.
- Newport County, RI in the Providence-Pawtucket-Woonsocket, RI MSA.

In addition, in the September 3, 1986 hospital prospective payment final rule, we provided an exception to the urban/rural classification system for hospitals in redesignated rural counties that are primarily surrounded on all sides by urban counties (51 FR 31469). We currently consider Shiawassee County, Michigan, which meets the exceptions criteria, as an urban area (in the Flint, Michigan MSA) in computing both the wage index and the payment amounts under the prospective payment system.

We propose to adopt these urban exceptions for the purpose of applying the HCFA wage index to the ASC facility payment rates. Since the ASC rates are applied also to hospital outpatient departments performing ASC covered procedures, we believe that adoption of the urban exceptions would provide for greater consistency among Medicare facilities in applying the HCFA wage index. That is, if these urban exceptions are not adopted, it would mean, for example, that a hospital located in Litchfield County, Connecticut that furnishes ASC-approved procedures in its outpatient department would be assigned two different wage index values: (1) An urban wage index value to calculate payment for the inpatient services, and (2) a rural wage index value to calculate payment for the ASC procedures. Classification of the same hospital as urban under one payment system and rural under another system and the assignment of two different wage index values is inconsistent and could be confusing, possibly resulting in payment error.

Section 4005 of Pub. L. 100-203 provides for further exceptions to the urban/rural classification system effective October 1, 1988. However, because the ASC rates proposed in this notice would be effective July 1, 1988, we do not believe it appropriate to incorporate the October 1, 1988 exceptions at this time.

7. Use of Weighted Median

In addition to collecting information on each facility's charge for a given procedure, the ASC survey collected

information on the number of times the procedure was furnished in the facility during the period covered by the survey. As explained above, we are proposing to make several adjustments to each facility's charge before determining the charge for the procedure across all facilities. We are proposing to use the median charge for the procedure, weighted by the number of times the procedure was performed on Medicare patients, to determine the charge for the procedure across all facilities. The number of times the procedure was performed on Medicare patients was determined by multiplying the total number of times the procedure was performed in the facility by the ratio of the number of Medicare patients treated by the facility to the total number of patients treated by the facility. The weighted median represents the charge at or below which the procedure was furnished 50 percent of the time to Medicare patients.

We believe the use of the Medicare weighted median is a distinct improvement over the previous methodology, which used an unweighted average. Previously, each facility carried the same weight regardless of whether it performed a procedure 5 times or 100 times. Weighting by the number of times the procedure was performed on Medicare patients gives recognition to the relative importance of each facility in furnishing procedures covered by the Medicare program. In addition, the use of the median as opposed to the mean eliminates the effect any extreme variations in individual facility charges might have on the charge for the procedure across facilities.

8. Cost-to-Charge Adjustment

Section 1833(i)(2)(A) of the Act requires that Medicare payments to ASCs be cost-related. To comply with this requirement, we are proposing to use a cost-to-charge ratio of 0.776. This ratio was calculated based on Medicare costs and charges derived from the 90 ASCs in the audited sample. The Medicare costs and charges were determined by multiplying each facility's total costs and charges by its ratio of Medicare patients to total patients. We are proposing to multiply the weighted median charge of each procedure by 0.776.

9. Revised Classification System

Industry representatives have suggested that the number of payment groups should be increased in view of the large number of procedures now approved for coverage and advances in medical technology. We indicated in our April 21, 1987 notice (52 FR 13176) that

we would consider changes to our current system if warranted by the new data. In this notice, we are proposing to eliminate the indexing method we currently use and develop a classification system based on fixed dollar intervals. We would expand the number of payment groups from four to six.

Additionally, because of the unique character of cataract procedures in ASCs, we solicit the advisability of classifying all cataract procedures within their own payment group. Cataract procedures account for approximately 53 percent of Medicare volume of ASC services and generate approximately 66 percent of all Medicare revenues in ASCs.

Currently, we use a four group classification system under which all procedures within the same group are paid the same rate. To develop that classification system, we used an indexing method for ranking each procedure based on a facility's charge for an individual procedure as compared to its average charge for all procedures offered. Since data were not available to permit the indexing of about 1200 new procedures added by the April 21, 1987 notice, we relied upon the medical expertise of our staff physicians to classify these procedures into the appropriate payment groups. The indexing method was intended to overcome facility bias in charging patterns related to cost and efficiency differences. Although it successfully compared a facility's charge for a given procedure to its average charge for all procedures, it did not provide a method to standardize the facility's average charge to permit comparison across facilities.

Our analysis of the per procedure charge data indicates that there are no common procedures that are offered by all facilities in our data base. Many centers perform specialty operations, for example, specializing in eye procedures only. While cataract extractions with IOL implantation tend to be the overall high volume procedure, a significant number of facilities do not perform this type of surgery. An eye specialty center performing a cataract extraction with insertion of an IOL generally would have a lower index value for that procedure than a multipurpose facility whose procedure volume is primarily associated with carpal tunnel surgery. One result was that there was a wide distribution in the costs of the procedures included in the same payment grouping. As discussed in detail, above, the data base we are using for this proposed notice is

comprised of data from the new survey form as reported in 1986 by 333 ASCs. The data base includes charge data on approximately 1200 of the more than 1500 covered procedure codes. Hence, the number of covered procedures is now four times as many as those initially subject to the indexing method.

Because of the wide variation found in types of procedures offered by ASCs represented in our data and the lack of a common procedure furnished by all ASCs, the indexing method is no longer effective in constructing a classification system. Rather, we believe that the following classification system based on \$75 intervals of the weighted median per procedure cost is more appropriate. This method would classify procedures with similar costs into the same payment group.

Payment Groups: Weighted Median Per Procedure Cost

- Group 1—Less than \$275
- Group 2—\$275 through \$349
- Group 3—\$350 through \$424
- Group 4—\$425 through \$499
- Group 5—\$500 through \$574
- Group 6—\$575 and above

10. Classifying Services with Limited Data

There are a number of services that we could not classify based on the cost data derived under the rate development methodology. Although the survey was conducted in 1986, it was designed to gather charge data on procedures that we anticipated would be approved for coverage in 1987. However, such data were not furnished for 316 procedures. The majority of these surgical procedures were among those added to the list of covered procedures effective May 21, 1987. Also, another 346 procedures involved reporting by fewer than three facilities. Since the pricing patterns of these procedures were based on a small universe of ASCs, we eliminated these costs from our data base to avoid a statistically unreliable impact on the rates.

We are proposing to assign these 662 procedures to the appropriate payment groups based on the medical expertise of our staff physicians. This practice is consistent with that used in 1987 when the list of procedures was expanded and our data base did not contain sufficient charge data to classify the added procedures.

In addition, we encountered some aberrant per procedure costs in our data base that we believe are largely due to low utilization and, in part, to errors in reporting that are a result of the ASCs lack of familiarity with the new survey form. These abnormal costs affect the

classification of 259 procedure codes. Of this number, 170 involve cost data reported by more than 2 facilities but fewer than 10 facilities. Analysis of these abnormal costs indicates that, in most cases, less costly procedures had higher per procedure costs than more complex ones.

For example, procedure code 26205 pertains to the removal of bone cyst or benign tumor of the metacarpal with autogenous graft that includes obtaining the graft. Procedure code 26215 is basically the same procedure but involves the proximal, middle, or distant phalanx. These two procedures are similar in terms of complexity and should be assigned to the same payment group. However, if we use reported costs to assign these procedures to the appropriate payment groups, 26205 would be assigned to payment Group 2 and 26215 would be assigned to Group 4. In this case, costs were reported by fewer than 10 ASCs.

In another instance, procedure code 11600 involves the removal of a malignant skin lesion that is less than 0.6 centimeters in diameter. Procedure code 11606 pertains to the removal of a malignant skin lesion over 4.0 centimeters in diameter. Although the latter procedure code is considered the more complex of the two, use of the new cost data would result in assignment of 11600 to a higher payment group (2) than 11606 (1). In this case, the number of facilities reporting costs for each procedure is in excess of 30. Therefore, we believe that the aberrant costs in this instance are attributable to reporting errors. Because of the number of similar procedures relating to the excision of skin lesions, we believe that reporting facilities may have failed to discriminate properly between them and may have instead combined codes when reporting.

Since these abnormal costs tend to create inconsistencies among the classification of similar procedures, we propose to eliminate costs associated with the 259 procedures from our data base. Our analysis indicates that elimination of these procedures would not affect calculation of the group rates since they are generally low-volume procedures. We propose to assign these surgical procedures to the appropriate payment groups based on the clinical judgment of our staff physicians. These proposed classifications are detailed in Addendum B to this proposed notice.

We have carefully considered the following alternatives to eliminating the anomalous per procedure costs:

a. *Not eliminate any abnormal costs.* While this approach would reduce the number of procedures that are subject to clinical judgment, we believe that it

would result in classifications being determined based on costs that are not representative of the industry experience and would produce payment rates that are clinically inconsistent.

b. *Group similar procedures and aggregate associated costs.* This option would tend to overcome inconsistencies in the pricing of like procedures; however, it would require uniformity of treatment across all procedures and would require extensive clinical judgments concerning which procedures should be grouped together.

c. *Eliminate the costs for all procedures if the number of facilities performing a given service is fewer than 10.* This approach may ensure that the data base is not biased by the pricing patterns of a small universe of facilities. However, we rejected this approach for two reasons. First our review indicated that the cost data for a number of procedures reported by fewer than 10 facilities appear reasonable and result in an appropriate payment grouping. We do not believe these data should be arbitrarily excluded. Unilateral elimination of procedures reported by fewer than 10 facilities would result in an additional 216 procedures that would be classified by clinical judgment only. In addition, even if we did eliminate these procedures, we would still need to address the issue of those procedures with aberrant costs that were reported by 10 or more facilities.

We invite public comment on our approach as well as cost information that would support changing any of the payment classifications we have made based on clinical judgment.

11. ASC Facility Payment Rates

To establish the payment rate for each of the six payment groups, we used a six-step procedure, as described below. We used per procedure charge data from 94 audited facilities and 239 unaudited facilities, or a total of 333 facilities. We excluded procedures that had charges reported by fewer than 3 facilities. Of the 1535 procedures, 316 procedures had no charge data and an additional 346 procedures had data reported by fewer than three facilities.

Step 1—We applied an inflation adjustment based on the CPI-U to the actual per procedure charge extracted from the survey data for each facility in order to account for historical and projected price changes occurring between the midpoint of the facility's fiscal period represented in our data base and the midpoint of the 12-month period to which the new rates would apply (December 31, 1988).

Step 2—To remove the effects of area wage differences, we standardized the charge for each procedure using the HCFA hospital wage index set forth in Addendum C to this proposed notice. Based on our analysis of the audited survey data, we determined that on the average, the labor-related portion is approximately 34.45 percent. We then divided 34.45 percent of the inflated charge for each procedure by the wage index applicable to the ASC's location.

Step 3—After adding the wage adjusted labor-related portion back to the nonlabor-related portion, we calculated the median charge, weighted by the Medicare frequency, for the facilities reporting charge data for the procedure.

Step 4—We related the weighted median charge per procedure to cost as required by section 1833(i)(2) of the Act. To make this adjustment, we multiplied the weighted median charge for each procedure by 0.776.

Step 5—We arrayed procedures in descending order of median weighted cost values. We then classified the covered procedures into six payment groups based on a classification system that was developed using \$75 intervals of the weighted median per procedure wage-adjusted costs.

Step 6—We then reviewed the cost for each procedure and its payment group to verify the clinical consistency in the classification of similar procedures and we identified 173 procedures with aberrant costs. We removed these procedures from the data base and assigned them to the appropriate payment group based on the clinical judgment of our staff physicians. After removing the 173 procedures, we set the payment rate at the weighted median cost of the procedures in each payment group, rounded to the nearest ten dollars.

The resulting ASC facility payment rates, as set forth below, would be effective July 1, 1988.

- Group 1—\$250
- Group 2—\$310
- Group 3—\$380
- Group 4—\$460
- Group 5—\$500
- Group 6—\$620

Addendum A to this proposed notice lists each CPT procedure code and the payment group under which we propose it would be paid, as well as the current group under which it is paid.

The proposed rates result in an estimated average increase of 5.5 percent. We are proposing these rates because they are based on the best data currently available to us, and we are

required to review and update the rates by July 1, 1988.

We believe that the survey data have certain limitations that we have addressed through our rate development methodology and use of the audited sample. For example, the survey did not capture the Medicare frequency data that would allow a direct determination of a facility's Medicare costs on a procedure-specific basis. Therefore, in order to take Medicare's experience into account in establishing the payment rates, we are proposing to determine the necessary Medicare statistics by multiplying the data for all patients by the ratio of Medicare patients to total patients. Other limitations are the reliability of the reported data and their currency in view of the rapid growth in ASC services furnished to Medicare patients. For purposes of future updates, we intend to initiate a regular data collection effort that would obtain current Medicare cost information on a procedure-specific basis.

In lieu of using the survey data to establish the rates that are effective July 1, 1988, we considered updating the current rates by the increase in the CPI-U and postponing any refinements in our methodology until we obtain more complete and, presumably, more reliable information from ASCs. We considered updating the current rates by the increase in the CPI-U because of clear evidence that the current rates are adequate to ensure that Medicare beneficiaries have access to ASC services. For example, the number of ASCs participating in the Medicare program has grown from 254 in 1984 to over 900. In 1984, only 56 percent of all ASCs were Medicare-participating whereas more than 90 percent are currently participating in Medicare. In Federal fiscal year (FY) 1984, Medicare expenditures for ASCs totaled \$34 million; expenditures for the first three quarters of FY 1987 (that is, the period before the July 1, 1987 update of the rates) were \$150 million and exceeded total FY 1986 expenditures. Although we have concluded that the survey represents an improvement over the data base used to establish the current rates and should be used to establish the rates to be effective on July 1, 1988, we invite public comment concerning whether it would be more appropriate to update the current rates using the CPI-U increase. Use of this method for updating would result in a 4.6 percent increase in the payment rates.

12. Calculation of an Individual ASC's Payment Rates

The following is an example of how the payment would be determined for a

procedure in Group 4 (\$460) performed in an ASC located in Baltimore, Maryland. The appropriate HCFA wage index value is 1.0178.

Adjusted rate

$$= [(\$460 \times .3445) \times 1.0178] + [\$460 \times .6555]$$

$$= [\$158.47 \times 1.0178] + \$301.53$$

$$= \$161.29 + \$301.53$$

$$= \$462.82$$

B. Other Proposed Changes

1. Payment for Intraocular Lens Implant Procedures

Currently, when an IOL is implanted during cataract surgery performed in an ASC, separate payment for the lens is made under Medicare Part B at 80 percent of the reasonable charge. Either the ASC or the physician may bill and be paid for the prosthesis. Section 4063(b) of Pub. L. 100-203 amended section 1833(i)(2)(A) of the Act to mandate that, effective July 1, 1988, payment for ASC facility services must include a payment for the IOL that is reasonable and related to the acquisition cost of the class of lens involved.

To implement the provisions of section 4063(b) of Pub. L. 100-203, we are proposing to adopt a \$200 add-on per lens to the appropriate payment group rate in which the specific cataract procedure that would require insertion of an IOL is classified. The add-on would be applicable to only the following covered procedures:

CPT-4 code	Proposed group
66983.....	6
66984.....	6
66985.....	4

While the amendment made by section 4063 of Pub. L. 100-203 to section 1833(i)(2)(A) of the Act requires that payment for IOLs be related to the cost of acquiring the class of lens implanted, we are proposing a single payment rate for IOLs at this time and invite public comment on the extent to which distinctions based on class are appropriate. We are doing this because our preliminary evidence is insufficient to allow for meaningful distinction in IOL pricing. We are soliciting scientific evidence that shows that one type of IOL is medically more beneficial than another to Medicare beneficiaries in order to make this distinction, if appropriate. As the choice of lens is made, generally, by the physician, it would be unreasonable to pay more for one type of lens than another unless the more expensive lens were medically

more beneficial to Medicare patients. We are interested in both information on the differences in lenses and scientific evidence regarding the medical benefits and medical reasons why some patients should require more complex and expensive lenses.

Based on information received from one industry component, eighty percent of the lenses currently used are multipiece, the basic styles being the J loop, the modified J loop, and the wide loop. Among other types, these include plano, biconvex, ridge, and aspheric optics and may be found with holes, without holes (or tabs), or with an ultraviolet absorber. About 19 percent of the IOLs are one piece and these also come in a large selection of styles with a variety of optics. Small incision, silicone, and hydrogel lenses are used in about one percent of current implants. Some industry representations have suggested that we adopt a three-tier classification system for payment of IOLs based on whether the IOL is a multipiece, one piece, or small incision lens. We invite comments on whether such distinctions are appropriate and particularly solicit scientific studies that might support such a position.

To determine an allowance for IOLs, we analyzed the data obtained from the Medicare participating ASCs on the 1986 ASC survey form. These data represented IOLs furnished by ASCs between June 1, 1985 and December 31, 1985. The net cost of a lens was defined as the total cost of lenses minus discounts, rebates, and refunds divided by those used, less any that were returned. In the survey, we defined two classes of lens: (1) Differentiated lenses including those with an ultraviolet filter, laser-safe optic, PMMA optics, or other special features and (2) generic lenses, which were all other types. The reported net cost of differentiated lenses by 123 ASCs ranged from \$126 to \$463. The net cost of generic lenses ranged from \$106 to \$402. Difference in lens style was not consistently related to net cost.

The survey results also reveal inconsistencies in the reporting of data. Some ASCs purchased highly specialized lenses for less than other facilities paid for generic types. Further, some ASCs failed to report any revenue or expenses associated with the IOLs.

Because of these factors, we asked the Office of the Inspector General (OIG) to review a sample of the ASCs that had participated in our survey. The OIG found that lens companies regularly offer significant discounts, rebates, and other incentives as inducements to purchase their product, but that generally these savings were not passed on to the Medicare program. In view of

the widespread availability of discounts and other price reductions, we believe it is appropriate in determining the reasonable payment rate for IOLs to consider only the cost incurred by ASCs that have been prudent purchasers and negotiated prices with the lens manufacturers.

Among the sample facilities visited, the OIG determined that 11 had negotiated prices with an average lens price of \$200. Another four had negotiated discounts, but it was not possible to determine the discount amount because, for example, the value of credits for supplies and equipment was not reflected on the IOL invoices or in the ASC records. Because this on-site inspection examined ASC invoices for IOLs and industry marketing practices, we believe that payment for lenses based on these results would be more appropriate than basing payment on the 1986 survey data that revealed significant inconsistencies in reporting net IOL costs. (Copies of this OIG final report entitled "Medicare Certified Ambulatory Surgical Centers, Cataract Surgery Costs and Related Issues," (OAI-09-88-00490 issued in March 1988) can be obtained by writing to the Office of Inspector General, 330 Independence Avenue SW., Washington, DC 20201.)

In its report, the OIG also recommended a handling fee allowance. We have not accepted this recommendation because the proposed ASC facility Group 6 payment rate of \$620 is already intended to fully compensate the ASC for all of its direct and indirect costs. All costs incurred in obtaining, handling and storing the lenses have been considered in setting the rate.

We invite comments on all of these studies and solicit any other information that can be provided on the reasonable acquisition cost of IOLs.

2. Payment for Terminated Surgical Procedures

We have received a number of requests for policy clarification regarding the appropriate ASC payment rate for a scheduled surgical procedure that is terminated due to medical complications that increase the surgical risk to the patient. Elevated blood pressure or eye pressure and cardiac or respiratory arrest are some of the common medical indicators that would trigger termination of a surgical procedure. We believe that termination of surgical procedures in the ASC setting should be an infrequent occurrence given the facilities' preoperative screening capabilities and the diagnostic testing that is required to ensure that

patients are good candidates for outpatient surgery.

It is our policy that a denial is appropriate when an ASC submits a claim for a procedure that is terminated either for nonmedical or medical reasons before the ASC has expended substantial resources (for example, the patient on intake complains of cold or flu). We believe that the carriers have had little trouble in making payment decisions in situations such as these. However, they have had difficulty in determining whether, or to what extent, payment should be made when surgery is terminated after the procedure has begun, for example, after anesthesia is induced.

Because we believe that ASCs incur some costs in connection with surgery that is terminated due to a sudden onset of medical complications, we are proposing that carriers pay ASCs 50 percent of the facility payment rate if the surgical procedure is terminated due to the onset of medical complications that occur after the patient has been prepped for surgery and taken to the operating room but before anesthesia has been induced (for example, the patient develops an allergic reaction to a drug administered by the ASC prior to surgery). (This, however, would not preclude the carrier from paying a different percentage of the rates if, in the individual case, documentation would support such action.)

However, if a medical complication arises after the inducement of the anesthetic agent, the carrier would pay the full applicable rate. In these cases, we believe that resources of the facility are consumed in essentially the same manner and to the same extent as they would have been had the surgery been completed as scheduled. In order for the carriers to pay ASCs a claim for terminated surgery, we are proposing that the facility be required to submit an operative report with each claim. Also, the carriers would be required to report all claims for terminated surgery to the appropriate peer review organization for quality of care review.

3. Elimination of Exception for Cataract Extraction with Insertion of Intraocular Lens

Since May 1983, Medicare payment policy has, with one exception, treated each of the ASC covered procedures designated by a single CPT-4 procedure code as a single procedure. The exception has been the insertion of an IOL prosthesis with cataract extraction (procedure codes 66983 and 66984). This cataract procedure has been paid at one

and one-half times the applicable Group 4 rate as if it were two procedures.

We instituted this exception in response to industry comments that the Group 4 rate did not take into account the additional costs associated with implanting the IOL in the same operative session in which the cataract is extracted. Then the procedure code (66980) did not distinguish between the various techniques (for example, intracapsular versus extracapsular) used in cataract surgery. Some industry representatives believed that the added costs of the IOL could vary significantly in relation to a particular technique. Because we did not have sufficient data available in 1982 that would have permitted us to determine a fair estimate of the added costs associated with these types of cataract surgery, we adopted this special exception in order to avoid penalizing ASCs for legitimate facility costs.

However, we now believe that adequate data are available that would permit us to determine a payment rate for such surgery. Therefore, we believe that an exception is no longer warranted. Cataract surgery accounts for about 53 percent of the Medicare procedure volume in our new data base. This volume represents reporting by more than one-third of the facilities.

We have compared the facilities' pricing for surgery by various techniques both with and without insertion of the IOL. Our analysis indicates that there are significant pricing differences between the extraction of a cataract and the implantation of an IOL in the same operation as compared to a procedure in which only an extraction or implant is done. Therefore, we believe that rates based on the reported per procedure charges for procedure codes 66983 and 66984 should reflect an appropriate cost level associated with performing these procedures. Under the proposed payment methodology, we also note that these cataract procedures are classified in Group 6 with procedures that have comparable costs and, because of their relatively high volume, the cataract procedures heavily influence the payment rate for the group. Under the previous methodology, these cataract procedures were classified with procedures that had a wider range of costs and, since there was no weighting, the cataract procedures had no more influence than any other procedure on the payment rate for the group. Thus, we believe a special exception for these procedures is no longer warranted and we are proposing to eliminate the payment policy exception applicable to procedure codes 66983 and 66984. We

would pay for each of these procedure codes as a single procedure at the proposed Group 6 rate.

V. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E. O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed notice such as this one that meets one of the E. O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that the proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all ASCs and hospitals as small entities.

Also, section 1102(b) of the Social Security Act requires the Secretary to prepare an initial regulatory impact analysis for any proposed notice such as this one that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area or a New England County Metropolitan Area.

The following discussion, in combination with the rest of this proposed notice, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

B. Program Costs

1. Payment to ASCs

As a direct result of increasing payment rates for procedures performed in ASCs, we would expect an average increase in payments per case to ASCs of approximately 5.5 percent for the period July 1, 1988 to June 30, 1989. Individual facilities, however, may experience significant variations in total revenues as a result of several factors

influencing local demand for ASC services. These factors may include—

- The concentration of ASCs in a market region;
- The number of hospital outpatient departments competing in the same market; and
- The number of Medicare beneficiaries in the market region.

The impact of the proposed rates on individual facilities would also greatly depend on a facility's case mix. Although an ASC with a typical case mix may expect the average payment per case to increase by about 5.5 percent, payments for cases falling into proposed Group 1, for example, would decrease 9 percent compared to the current payment levels for Group 1. This contrasts with proposed increases of nearly 8 percent and 15 percent in the ASC rates for cases falling into proposed Groups 3 and 4, respectively, compared to the rates for the current Groups 3 and 4. Thus, ASCs that serve a larger than average number of cases that would be classified into Groups 3 or 4 could expect to receive a larger than average increase in Medicare payments while ASCs that serve a larger than average number of cases categorized into Group 1 could expect a smaller than average increase and possibly a decrease.

It should be noted, however, that because of the proposed revision to the grouping methodology, the four current payment Groups cannot be compared directly to proposed Groups 1, 2, 3, and 4. For example, cases that are classified into Group 1 under the present payment system may fall into either Groups 1 or 2 under the proposed payment system. Thus, the only valid method of comparison would be to compare rates under the two systems for each procedure.

For the most frequently performed procedure (that is, the one-stage removal of a cataract and insertion of an intraocular lens, which would be assigned to proposed Group 6), the change in payment rate would be an increase of about 3.5 percent. The survey data indicate that cataract procedures account for about 53 percent of the Medicare volume of ASC services, and under our proposed rates, they should generate about 66 percent of all Medicare revenues.

Another factor that would affect ASC payments is the proposed replacement of the BLS wage index with the HCFA wage index that was published in the September 1, 1987 hospital prospective payment final rule for computing the ASC rates and payment amounts. Because the HCFA wage index is based

on gross hourly wages paid to hospital employees rather than on the average salary per hospital employee (which serves as the basis for the 1981 BLS wage index), application of the HCFA wage index would produce different index values for each rural and urban locality from those values in effect now. Thus, depending on an ASC's location, the effect of using the HCFA wage index in place of the BLS wage index, both in computing the ASC rates and in determining payments to ASCs, would be to slightly increase or decrease payments from the amount an ASC would receive using the 1981 BLS wage index.

Table I, below, displays the projected effects of the proposed rates over the next five fiscal years, beginning with FY 1989.

TABLE I.—PROJECTED MEDICARE COSTS AS A RESULT OF PROPOSED ASC RATES*

FY 1989	FY 1990	FY 1991	FY 1992	FY 1993
\$0	\$5	\$5	\$5	\$5

*Rounded to the nearest \$5 million.

Since we are rounding our projected cost estimates to the nearest \$5 million, we point out that the value entered for FY1989 signifies increased Medicare outlays of less than \$2.5 million rather than no increase.

It is significant to note that the number of ASCs participating in Medicare has grown from 87 in 1983 to 838 by the end of 1987. The rapid increase in the number of ASCs, especially among proprietary facilities, indicates that few barriers to market entry exist and that most facilities have been financially successful. The only serious barriers to market entry appear to be State laws restricting licensure of ASCs or Certificate of Need restrictions on the building of ASCs. Where construction or operations of ASCs are permitted by State laws, we anticipate that the proposed rate changes would further stimulate the expansion of ASCs.

It is not clear, however, whether the rapid development of ASCs is entirely the result of the level of facility payments. Prior to April 1, 1988, physicians providing approved services in an ASC received payments equal to 100 percent of their reasonable charges if they accepted assignment. In addition, many physicians have financial interests in ASCs. The combined incentives of higher Medicare payments to physicians and physicians' proprietary interests may also have played a significant role in the rapid growth of ASCs.

Effective April 1, 1988, section 4054 of Pub. L. 100-203 required us to reduce payments to physicians accepting Medicare assignment from 100 percent of their reasonable charges for services performed in an ASC to 80 percent (leaving the Medicare beneficiary responsible for the 20 percent copayment). We are unable to determine what effects this change in physician payments, in combination with the proposed payment rates to ASCs, will have on ASC utilization or the continued growth of ASCs in Medicare participation. On the one hand, the reduction of payments from 100 percent to 80 percent of physicians' reasonable charges will reduce direct payments to physicians. On the other hand, the higher ASC rates would directly benefit ASCs and may indirectly benefit those physicians who have proprietary interests in ASCs.

We believe that the incentives created by higher ASC facility payments would stimulate physicians with proprietary interests in ASCs to provide services in an ASC setting whenever possible. To the extent that physicians would seek to shift services from either the hospital inpatient or outpatient setting to the ASC, this should result in some program savings and savings to beneficiaries in the form of lower copayments.

2. Payments for ASC Covered Procedures Performed in Hospitals on an Outpatient Basis

a. *Payment Methodology.* Section 9343(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) amended section 1833(a)(4) of the Act and added section 1833(i)(3) to the Act to provide that, for hospital cost reporting periods beginning on or after October 1, 1987, payment for services approved to be performed in ASCs, but performed in hospitals on an outpatient basis is to be based, in the aggregate, on a comparison between two amounts. The payment is to be the lesser of the following:

- The amount for the services that would be paid to the hospital under section 1833(a)(2)(B) of the Act (that is, the lower of the hospital's reasonable costs or customary charges for the services, reduced by deductibles and coinsurance).
- An amount based on a blend of—
 - The amount that would be paid to the hospital for the services under section 1833(a)(2)(B) of the Act reduced by deductibles and coinsurance (called the hospital-specific amount); and
 - The amount that would be paid to a freestanding ASC for the same procedure in the same geographic area

in accordance with section 1833(i)(2)(A) of the Act, which is equal to 80 percent of the standard overhead amount net of deductibles (the ASC amount).

Section 1833(i)(3)(B) of the Act further specifies that for cost reporting periods beginning on or after October 1, 1987 but before October 1, 1988, the blended amount is to be determined by using 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount attributable to the procedure. For cost reporting periods beginning on or after October 1, 1988, the blended payment amount is to be based on 50 percent of the ASC payment amount. This provision of the law was implemented through a final rule published on October 1, 1987 (52 FR 36765) and is set forth in regulations at § 413.118.

b. *Impact of Proposed ASC Rates on Payments for Hospital Outpatient Services.* It should be noted that although payments for IOLs provided in connection with cataract procedures performed in a hospital outpatient setting must be incorporated into the ASC portion of the hospital's blended payment (in compliance with section 4063(b) of Pub. L. 100-203), our study of hospital payments for cataract procedures does not examine the effects the proposed IOL payment of \$200 would have on hospital payments. Instead we relied on data derived from several sources to arrive at an overall average payment for IOLs and compared this amount to the proposed \$200 amount (See section B.3 of this impact analysis for more information.)

Our analysis did not specifically address the impact of the statutory change in the blend from the current 25 percent ASC amount and 75 percent hospital-specific amount to a 50 percent blend of each amount because this change is mandated by statute rather than by this proposed notice. To control for the effects of the statutory change in the blend, we compared current payments under current rates based on a blend of 50 percent ASC rates and 50 percent hospital-specific amounts with payments under the proposed rates and the same blend of ASC and hospital-specific amounts. Also, our results reflect only proposed changes to the ASC rates and do not reflect any changes in behavior that hospitals or physicians may adopt in response to the rate changes.

It should be noted that although our proposed rates would result in higher payments to hospitals for performing ASC-approved procedures on an outpatient basis than what they would

have received, overall payments have declined (and will continue to decline) as a result of section 1833(i)(3)(A) of the Act, which requires us to pay hospitals for these services at the lower of the hospitals aggregate cost or charges, or a blend of the hospital's cost or charges and the applicable ASC amount (whichever is less). Thus, the increase in payments being proposed must be viewed in the context of an overall reduction in payments that became effective for cost reporting periods beginning on or after October 1, 1987.

Prior to October 1, 1987, hospitals submitted claims for outpatient services using the International Classification of Diseases 9th edition, Clinical modification (ICD-9-CM). Since October 1, 1987, hospitals have been required to use the HCPCS coding system on claims for outpatient services, which is the same coding system as is used by ASCs. In order to estimate the impact of the proposed rates on payments to hospitals, we reviewed outpatient bills received from October 1, 1987 through April 1988 using the HCPCS coding system. We used the seven months of billing data to analyze the costs and payment rates for high volume ASC procedures performed in hospital outpatient departments. Based on this analysis we estimate that the proposed ASC payment rates would result in an approximate one percent increase in payments to hospitals for ASC procedures performed in hospital outpatient settings. Consequently, we believe that this notice will not have a significant impact on hospitals and on rural hospitals. For FY 1988, we project that the proposed ASC rates will produce a rise in Medicare hospital outpatient services payments in the range of \$0-5 million. Over the next five fiscal years, beginning in FY 1989, we project a \$140 million increase in Medicare expenditures.

Table II below shows the projected impact of the proposed rates on Medicare program expenditures over the next five fiscal years beginning with FY 1989. In arriving at these estimates, present payments under existing ASC rates, computed on the basis of the 50 percent payment blend that will become effective for hospital cost reporting periods beginning on or after October 1, 1988, were compared with proposed payments and rates computed on the basis of the same 50 percent blend. The estimates assume these payment conditions will remain in effect over the next five fiscal years. In addition, the average year-to-year increase in payments was weighted to reflect the distribution of cases falling into the six

payment groups and the variation in payment increases among the proposed payment groups compared to the current payment rates and categories.

TABLE II.—ESTIMATED RANGE OF MEDICARE PROGRAM COSTS FOR HOSPITAL OUTPATIENT SERVICES RESULTING FROM PROPOSED ASC PAYMENT RATES

(in millions)				
FY 1989	FY 1990	FY 1991	FY 1992	FY 1993
\$0-20	\$0-20	\$0-30	\$0-30	\$0-40

3. Impact of Changes in Payments for IOLs

In addition to proposing changes in the way we determine payment rates for ASCs and increases in those rates, we also propose to establish a single payment amount for an IOL provided to a Medicare patient in connection with the performing of a cataract procedure in an ASC (in accordance with section 4063(b) of Pub. L. 100-203 which amended section 1833(i)(2)(A) of the Act). The amount we propose to pay is \$200 per IOL. (See section IV.B.1. of this notice for a full explanation of how we determined this amount.)

Under section 1833(i)(3)(A) of the Act, we are required to determine payment to a hospital that performs an ASC approved procedure in an outpatient setting on the basis of the applicable standard ASC rate (as determined under section 1833(i)(2)(A) of the Act) that would be paid to an ASC in the same geographic area when the hospital's cost or charges exceed the appropriate blend of the applicable wage adjusted ASC rate and the hospital-specific payment amount. For periods between July 1, 1988 and the hospital's next cost reporting period that begins in FY 1989, the blend is comprised of 25 percent of the wage adjusted ASC rate and 75 percent of the hospital-specific amount. For hospital cost reports that begin on or after October 1, 1988, the blend is comprised of 50 percent of the wage adjusted ASC payment rate and 50 percent of the hospital specific amount.

Since section 4063(b) of Pub. L. 100-203 amended section 1833(i)(2)(A) of the Act to include a standard payment amount of IOLs furnished in an ASC, we propose to base payments to hospitals for the furnishing of an IOL in connection with a cataract procedure on the same amount we are proposing to pay an IOL furnished in an ASC. That is, we would pay a hospital for an IOL supplied in connection with a cataract procedure a blend comprised of 25 percent of the standard IOL amount and

75 percent of the hospital's acquisition cost during the period of July 1, 1988 to the hospital's next cost reporting period that begins in FY 1989. For hospital cost reporting period beginning on or after October 1, 1988, we would pay the hospital a blend comprised of 50 percent of the standard IOL amount and 50 percent of the hospital's IOL acquisition cost.

Data derived from several sources, discussed in section IV.B.1. of this notice, indicate that the average amount we now pay both ASCs and hospitals is \$350 per IOL. By setting the payment amount per IOL at \$200, the Medicare program would be able to save about \$50 million in FY 1989 and about \$300 million over the next five fiscal years.

For the typical ASC, the combined effect of the increase in the standard payment for a cataract procedure involving the implantation of an IOL and the decrease in the payment amount for the IOL itself would result in an overall reduction of about 14 percent compared to the combined amount we now pay. For the typical hospital, the combined impact of the proposed ASC rate change and IOL payment amount would result in a five percent reduction for hospital cost reporting periods beginning in FY 1989. Here again, to control for the statutory change in the blend, we compared present payments based on a 50 percent blend of ASC and hospital-specific amounts with proposed payment using the same blend.

Table III, below, shows the annual savings to the Medicare program for the next five fiscal years, beginning with FY 1989, that would result from the proposal to establish payments for IOLs at \$200 per lens.

TABLE III.—MEDICARE PROGRAM SAVINGS RESULTING FROM THE PROPOSAL TO PAY \$200 PER IOL SUPPLIED IN ASCS AND IN HOSPITAL OUTPATIENT SETTINGS *

FY 1989	FY 1990	FY 1991	FY 1992	FY 1993
-\$50	-\$60	-\$60	-\$60	-\$70

* Rounded to the nearest \$10 million.

C. Conclusion

In general terms, we believe the payment reduction necessitated by the statutory blend change, in combination with the increase in payments made directly to ASCs, and the incentives for doctors to take a proprietary interest in ASCs, would have the effect of shifting the furnishing of ASC-approved procedures from the hospital outpatient

setting to the ASC setting. For those ASC procedures that will continue to be performed in hospital outpatient settings, the proposed ASC rate would significantly lessen the reductions in payment for these services mandated by statute.

VI. Other Required Information

A. Paperwork Reduction Act

This proposed notice would not impose information collection requirements. Consequently, it need not be reviewed by EOMB under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3511).

B. Effective Date of the Revised Payment Rates

Section 1833(i)(2)(A) of the Act requires that the ASC payment rates be reviewed and updated not later than July 1, 1988. However, we are first publishing the revised rates in proposed

form to allow full public participation and comment before publication of the final rates. In addition, in accordance with the provisions of section 1871(b)(1) of the Act, we are allowing a 60-day period for public comment. Since we did not publish the final rates before the statutorily required effective date of July 1, 1988, we issued a program instruction to our Medicare contractors describing the interim payment procedures for ASCs for facility services and intraocular lenses effective July 1, 1988. As of that date, Medicare payments for intraocular lenses will no longer be made to physicians.

We plan to issue the notice of final rates as soon as possible following the end of the comment period and our evaluation and consideration of the comments we receive. When we do publish the final payment rates, they will be retroactively applied to all services furnished on or after July 1, 1988.

C. Comments

Because of the large number of items of correspondence we normally receive on a proposed notice, we are not able to acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble and respond to those comments in the preamble to that notice.

(Sections 1832(a) and 1833(i) of the Social Security Act (42 U.S.C. 1395k(a) and 1395l(i); 42 CFR 416.120)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplemental Medical Insurance)

Dated: August 4, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: August 8, 1988.

Otis R. Bowen,
Secretary.

Addenda

Addendum A—List of Covered Surgical Procedures.—Addendum

Note:

- Procedure codes preceded by an asterisk indicate that the procedure has been covered since August 5, 1982.
- Procedure codes without an asterisk indicate additions to the list of surgical procedures which are covered effective May 21, 1987. The covered procedures, listed by body system and payment, together with applicable CPT-4 codes, are as follows:

Payment groups			
Old	New		
		Integumentary system	
		Skin, Subcutaneous and Areolar Tissues	
Incision			
10141	2	2	Incision and drainage of hematoma; complicated.
Excision debridement			
11042	1	2	Debridement; skin, and subcutaneous tissue.
11043	1	2	Debridement; skin, subcutaneous tissue, and muscle.
11044	1	2	Debridement; skin, subcutaneous tissue, muscle, and bone.
Excision-benign lesions			
*11200	1	2	Excision, skin tags, multiple fibrocuteaneous tags, any area; up to 15.
*11201	1	1	Each additional ten lesions.
*11401	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 0.6 to 1.0 cm.
*11402	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 1.1 to 2.0 cm.
*11403	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 2.1 to 3.0 cm.
*11404	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 3.1 to 4.0 cm.
*11406	1	2	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter over 4.0 cm.
*11421	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter 0.6 to 1.0 cm.
*11422	1	2	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter 1.1 to 2.0 cm.
*11423	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter 2.1 to 3.0 cm.
*11424	1	1	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter 3.1 to 4.0 cm.
*11426	1	2	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter over 4.0 cm.
*11441	1	1	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 0.6 to 1.0 cm.
*11442	1	1	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 1.1 to 2.0 cm.
*11443	1	1	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 2.1 to 3.0 cm.
*11444	1	1	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 3.1 to 4.0 cm.
*11446	1	2	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter over 4.0 cm.
11471	2	2	Excision of skin and subcutaneous tissue for hidradenitis, perianal, perineal, or umbilical; with other closure.
Excision—Malignant lesions			

Payment groups			
Old	New		
*11600.....	1	1	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 0.5 cm or less.
*11601.....	1	1	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 0.6 to 1.0 cm.
*11602.....	1	1	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 1.1 to 2.0 cm.
*11603.....	1	1	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 2.1 to 3.0 cm.
*11604.....	1	1	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 3.1 to 4.0 cm.
*11606.....	2	2	Excision, malignant lesion, trunk, arms, or legs; lesion diameter over 4.0 cm.
*11620.....	1	1	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 0.5 cm or less.
*11621.....	1	1	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 0.6 to 1.0 cm.
*11622.....	1	1	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 1.1 to 2.0 cm.
*11623.....	1	1	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 2.1 to 3.0 cm.
*11624.....	1	1	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 3.1 to 4.0 cm.
*11626.....	2	2	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter over 4.0 cm.
*11640.....	1	1	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 0.5 cm or less.
*11641.....	1	1	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 0.6 to 1.0 cm.
*11642.....	1	1	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 1.1 to 2.0 cm.
*11643.....	1	1	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 2.1 to 3.0 cm.
*11644.....	1	1	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 3.1 to 4.0 cm.
*11646.....	2	2	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter over 4.0 cm.
Nails			
*11750.....	1	1	Excision of nail and nail matrix, partial or complete, (e.g., ingrown or deformed nail) for permanent removal.
Miscellaneous			
*11770.....	3	3	Excision of pilonidal cyst or sinus; simple.
*11771.....	3	3	Excision of pilonidal cyst or sinus; extensive.
*11772.....	3	3	Excision of pilonidal cyst or sinus; complicated.
Repair-simple			
12006.....	2	2	Simple repair of superficial wounds of scalp, neck, axillae, external genitalia, trunk and/or extremities (including hands and feet); 20.1 cm to 30.0 cm.
12007.....	2	2	Simple repair of superficial wounds of scalp, neck, axillae, external genitalia, trunk and/or extremities (including hands and feet); over 30.0 cm.
12017.....	2	2	Simple repair of superficial wounds of face, ears, eyelids, nose, lips and/or mucous membranes; 20.1 cm to 30.0 cm.
12018.....	2	2	Simple repair of superficial wounds of face, ears, eyelids, nose, lips and/or mucous membranes; over 30.0 cm.
Repair-intermediate			
12036.....	2	2	Layer closure of wounds of scalp, axillae, trunk and/or extremities (excluding hands and feet); 20.1 cm to 30.0 cm.
12037.....	2	2	Layer closure of wounds of scalp, axillae, trunk and/or extremities (excluding hands and feet); over 30.0 cm.
12046.....	2	2	Layer closure of wounds of neck, hands, feet and/or external genitalia; 20.1 cm to 30.0 cm.
12047.....	2	2	Layer closure of wounds of neck, hands, feet and/or external genitalia; over 30.0 cm.
12056.....	2	2	Layer closure of wounds of face, ears, eyelids, nose, lips and/or mucous membranes; 20.1 cm to 30.0 cm.
12057.....	2	2	Layer closure of wounds of face, ears, eyelids, nose, lips and/or mucous membranes; over 30.0 cm.
Repair-complex			
13101.....	1	2	Repair, complex, trunk; 2.6 cm to 7.5 cm.
13121.....	1	3	Repair, complex, scalp, arms, and/or legs; 2.6 cm to 7.5 cm.
13132.....	2	3	Repair, complex, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; 2.6 cm to 7.5 cm.
13152.....	3	3	Repair, complex, eyelids, nose, ears, and/or lips; 2.6 cm to 7.5 cm.
13300.....	3	4	Repair, unusual, complicated, over 7.5 cm, any area.
Adjacent tissue transfer or rearrangement			
14001.....	3	3	Adjacent tissue transfer or rearrangement, trunk; defect 10.1 sq cm to 30.0 sq cm.
14020.....	3	3	Adjacent tissue transfer or rearrangement, scalp, arms and/or legs; defect 10 sq cm or less.
14021.....	3	3	Adjacent tissue transfer or rearrangement, scalp, arms and/or legs; defect 10.1 sq cm to 30.0 sq cm.
14041.....	3	3	Adjacent tissue transfer or rearrangement, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; defect 10.1 sq cm to 30.0 sq cm.
14060.....	3	3	Adjacent tissue transfer or rearrangement, eyelids, nose, ears and/or lips; defect 10 sq cm or less.
14061.....	3	3	Adjacent tissue transfer or rearrangement, eyelids, nose, ears and/or lips; defect 10.1 sq cm to 30.0 sq cm.
14300.....	3	4	Adjacent tissue transfer or rearrangement, more than 30 sq cm, unusual or complicated, any area.
14350.....	3	3	Filleted finger or toe flap, including preparation of recipient site.
Free skin grafts			
*15000.....	3	2	Excisional preparation or creation of recipient site by excision of essentially intact skin (including subcutaneous tissues), scar, or other lesion prior to repair with free skin graft (list as separate service in addition to skin graft).
*15050.....	3	2	Pinch graft, single or multiple, to cover small ulcer, tip of digit, or other minimal open area (except on face), up to defect size 2 cm diameter.
*15100.....	3	2	Split graft, trunk, scalp, arms, legs, hands, and/or feet (except multiple digits); 100 sq cm or less, or each one percent of body area of infants and children (except 15050).
*15101.....	3	3	Split graft, trunk, scalp, arms, legs, hands, and/or feet (except multiple digits); each additional 100 sq cm, or each one percent body area of infants and children, or part thereof.
15200.....	3	3	Full thickness graft, free, including direct closure of donor site, trunk; 20 sq cm or less.
15201.....	3	2	Full thickness graft, free, including direct closure of donor site, trunk; each additional 20 sq cm.
15220.....	3	2	Full thickness graft, free, including direct closure of donor site, scalp, arms, and/or legs; 20 sq cm or less.
15221.....	3	2	Full thickness graft, free, including direct closure of donor site, scalp, arms, and/or legs; each additional 20 sq cm.
15240.....	3	3	Full thickness graft, free, including direct closure of donor site, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; 20 sq cm or less.
15241.....	3	3	Full thickness graft, free, including direct closure of donor site, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; each additional 20 sq cm.
15260.....	3	2	Full thickness graft, free, including direct closure of donor site, nose, ears, eyelids, and/or lips; 20 sq cm or less.
15261.....	3	2	Full thickness graft, free, including direct closure of donor site, nose, ears, eyelids, and/or lips, each additional 20 sq cm.
15350.....	3	2	Application of allograft (homograft), skin.
15410.....	3	2	Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; 100 sq cm or less.
15412.....	3	3	Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; between 101 and 160 sq cm.

Payment groups		
Old	New	
15414.....	3	3 Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; between 161 and 230 sq cm.
15416.....	3	3 Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; over 230 sq cm.
Repair		
Pedicle flaps (skin and deep tissues)		
15500.....	4	3 Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on trunk.
15505.....	4	3 Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on scalp, arms, or legs.
15510.....	4	4 Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands, or feet.
15515.....	4	4 Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on eyelids, nose, ears, or lips.
15540.....	4	1 Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to trunk.
15545.....	4	2 Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to scalp, arms, or legs.
15550.....	4	2 Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to forehead, cheeks, chin, mouth, neck, axillae, genitalia, or hands, feet.
15555.....	4	3 Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to eyelids, nose, ears or lips.
15580.....	4	3 Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; cross finger pedicle flap, including free graft to donor site.
15600.....	4	3 Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at trunk.
15610.....	4	3 Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at scalp, arms, or legs.
15620.....	4	4 Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at forehead, cheeks, chin, neck, axillae, genitalia, hands (except 15625), or feet.
15625.....	4	3 Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; section pedicle of cross finger flap.
15630.....	4	3 Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at eyelids, nose, ears, or lips.
15650.....	4	5 Transfer, intermediate, of any pedicle flap (e.g., abdomen to wrist, Walking tube), any location.
15700.....	4	1 Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; trunk.
15710.....	4	2 Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; scalp, arms, or legs.
15720.....	4	2 Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands, or feet.
15730.....	4	3 Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; eyelids, nose, ears, or lips.
Other grafts		
15740.....	3	2 Graft; island pedicle flap.
15745.....	4	2 Graft; myocutaneous flap.
15750.....	4	2 Graft; neurovascular pedicle flap.
15755.....	4	3 Graft; free flap (microvascular transfer).
15760.....	3	2 Graft; composite (full thickness of external ear or nasal ala); including primary closure, donor area.
15770.....	3	3 Graft; derma-fat-fascia.
Miscellaneous procedures		
15840.....	4	4 Graft for facial nerve paralysis; free fascia graft (including obtaining fascia).
15841.....	4	4 Graft for facial nerve paralysis; free muscle graft (including obtaining graft).
15842.....	4	4 Graft for facial nerve paralysis; free muscle graft by microsurgical technique.
15845.....	4	4 Graft for facial nerve paralysis; regional muscle transfer.
Pressure ulcers (decubitus ulcers)		
15920.....	3	3 Excision, coccygeal pressure ulcer, with coccygectomy; with primary suture.
15922.....	3	4 Excision, coccygeal pressure ulcer, with coccygectomy; with local or regional skin flap closure.
15931.....	3	3 Excision, sacral pressure ulcer, with primary suture.
15933.....	3	3 Excision, sacral pressure ulcer, with primary suture; with ostectomy.
15941.....	3	3 Excision, ischial pressure ulcer, with primary suture; with ostectomy (ischlectomy).
15944.....	3	3 Excision, ischial pressure ulcer, with local or regional skin flap closure.
15945.....	3	4 Excision, ischial pressure ulcer, with local or regional or regional skin flap closure; with ostectomy.
15946.....	3	4 Excision, ischial pressure ulcer, with ostectomy, with muscle flap or myocutaneous flap closure.
15950.....	3	3 Excision, trochanteric pressure ulcer with primary suture.
15951.....	3	4 Excision, trochanteric pressure ulcer, with primary suture; with ostectomy.
15952.....	3	3 Excision, trochanteric pressure ulcer, with local rotation skin flap closure.
15953.....	3	4 Excision, trochanteric pressure ulcer, with local rotation skin flap closure; with ostectomy.
15954.....	3	3 Excision, trochanteric pressure ulcer, with bipedicle flap closure.
15955.....	3	4 Excision, trochanteric pressure ulcer, with bipedicle flap closure; with ostectomy.
15956.....	3	3 Excision, trochanteric pressure ulcer, with muscle or myocutaneous flap closure.
15958.....	3	4 Excision, trochanteric pressure ulcer, with muscle or myocutaneous flap closure; with ostectomy.
15960.....	3	2 Excision, heel pressure ulcer, with primary suture.
15961.....	3	4 Excision, heel pressure ulcer, with primary suture; with ostectomy.
15964.....	3	3 Excision, heel pressure ulcer, with skin flap closure.
15965.....	3	4 Excision, heel pressure ulcer, with skin flap closure; with ostectomy.
15966.....	3	4 Excision, heel pressure ulcer, with other flap closure.
15967.....	3	4 Excision, heel pressure ulcer, with other flap closure; with ostectomy.
15970.....	3	2 Excision, leg pressure ulcer, with primary suture.
15971.....	3	4 Excision, leg pressure ulcer, with ostectomy.
15972.....	3	3 Excision, leg pressure ulcer, with local skin flap(s).
15973.....	3	4 Excision, leg pressure ulcer, with local skin flap(s); with ostectomy.
15974.....	3	4 Excision, leg pressure ulcer, with muscle or myocutaneous flap closure.
15975.....	3	4 Excision, leg pressure ulcer, with muscle or myocutaneous flap closure; with ostectomy.
15980.....	3	3 Excision, knee pressure ulcer with local skin flap closure.
15981.....	3	4 Excision, knee pressure ulcer, with local skin flap closure; with ostectomy.
15982.....	3	3 Excision, knee pressure ulcer, with other flap closure.
15983.....	3	4 Excision, knee pressure ulcer, with other flap closure; with ostectomy.

Payment groups			
	Old	New	
Burns, local treatment			
16015	1	2	Dressing and/or debridement, initial or subsequent; under anesthesia, medium or large, or with major debridement.
Incision			
19020	1	2	Mastectomy with exploration or drainage of abscess, deep.
Excision			
*19101	3	3	Biopsy of breast; incisional.
*19120	3	3	Excision of cyst, fibroadenoma, or other benign or malignant tumor, aberrant breast tissue, duct lesion or nipple lesion (except 19140), male or female, on or more lesions.
*19140	4	4	Mastectomy for gynecomastia through circumareolar or other incision.
19160	4	3	Mastectomy, partial.
19180	4	4	Mastectomy, simple, complete.
19182	4	4	Mastectomy, subcutaneous.
Musculoskeletal system			
General			
Incision			
20005	1	2	Incision of soft tissue abscess (e.g., secondary to osteomyelitis); deep or complicated.
Excision			
20205	1	3	Biopsy, muscle; deep.
20225	3	2	Biopsy, bone, trocar or needle; deep (vertebral body, femur).
20240	2	2	Biopsy, excisional; superficial (e.g., ilium, sternum, spinous process, ribs, trochanter of femur).
20245	3	3	Biopsy, excisional, deep (e.g., humerus, ischium, femur).
20250	4	3	Biopsy, vertebral body, open; thoracic.
20251	4	3	Biopsy, vertebral body, open; lumbar or cervical.
Introduction or removal			
20525	2	3	Removal of foreign body in muscle; deep or complicated.
20650	2	3	Insertion of wire or pin with application of skeletal traction, including removal (separate procedure).
20660	2	2	Application of tongs or caliper, including removal (separate procedure).
20661	2	3	Application of halo; including removal cranial.
20662	2	3	Application of halo; pelvic.
20663	2	3	Application of halo; femoral.
20665	2	1	Removal of tongs or halo applied by another physician.
20680	3	3	Removal of implant; deep (e.g., buried wire, pin, screw, metal band, nail, rod or plate).
Grafts (or implants)			
20900	3	3	Bone graft, any donor area; minor or small (e.g., dowel or button).
20902	4	4	Bone graft, any donor area; major or large.
20912	4	4	Cartilage graft; nasal septum.
20920	4	4	Fascia lata graft; by stripper.
20922	4	3	Fascia lata graft; by incision and area exposure, complex or sheet.
20926	4	4	Tissue grafts, other (e.g., paratenon, fat, dermis, etc.).
Miscellaneous			
20955	4	4	Bone graft with microvascular anastomosis; fibula.
20960	4	4	Bone graft with microvascular anastomosis; rib.
20962	4	4	Bone graft with microvascular anastomosis; other bone graft (specify).
20969	4	4	Free osteocutaneous flap with microvascular anastomosis; other than iliac crest, rib, metatarsal, or great toe.
20970	4	4	Free osteocutaneous flap with microvascular anastomosis; iliac crest.
20971	4	4	Free osteocutaneous flap with microvascular anastomosis; rib.
20972	4	4	Free osteocutaneous flap with microvascular anastomosis; metatarsal.
20973	4	4	Free osteocutaneous flap with microvascular anastomosis; great toe with web space.
20975	2	2	Electrical stimulation to aid bone healing; invasive (operative).
Head			
Incision			
21010	3	2	Arthrotomy, temporomandibular joint; unilateral.
21011	3	3	Arthrotomy, temporomandibular joint; bilateral.
General			
Excision			
21034	4	3	Excision of malignant tumor of facial bone other than mandible.
*21040	3	2	Excision of benign cyst or tumor of mandible; simple.
21044	4	2	Excision of malignant tumor of mandible.
21050	4	3	Arthrectomy, temporomandibular joint; unilateral.
21060	4	2	Menisectomy, temporomandibular joint; unilateral.
21061	4	2	Menisectomy, temporomandibular joint; bilateral.
Introduction or removal			
21100	4	2	Application of halo type appliance for maxillofacial fixation, includes removal (separate procedure).
Fracture and/or dislocation			
*21310	1	2	Treatment of closed or open nasal fracture without manipulation.
*21315	1	2	Manipulative treatment, nasal bone fracture; without stabilization.
21320	1	2	Manipulative treatment, nasal bone fracture; with stabilization.
21325	3	4	Open treatment of nasal fracture; uncomplicated.
21330	4	5	Open treatment of nasal fracture; complicated, with internal and/or external skeletal fixation.
21335	4	6	Open treatment of nasal fracture; with concomitant open treatment of fractured septum.
21338	4	4	Open treatment of nasoethmoid fracture; without external fixation.
21340	4	4	Treatment of closed or open nasoethmoid complex fracture, with splint, wire or headcap fixation, including repair of canthal ligaments and/or the nasolacrimal apparatus.
*21355	2	3	Manipulative treatment of closed or open fracture of malar area, including zygomatic arch and malar tripod, towel clip technique.
*21360	2	4	Open treatment of closed or open depressed malar fracture, including zygomatic arch and malar tripod.
21365	4	5	Open treatment of closed or open complicated (e.g., multiple fractures), of malar area, including zygomatic arch and malar tripod, with internal skeletal fixation and multiple surgical approaches.

Payment groups		
Old	New	
21450.....	4	3 Treatment of closed or open mandibular fracture; without manipulation.
21451.....	4	4 Treatment of closed or open mandibular fracture; with manipulation, may include external fixation.
21452.....	4	2 Treatment of open mandibular fracture; without manipulation.
21453.....	4	3 Treatment of open mandibular fracture; with manipulation.
21480.....	2	1 Uncomplicated treatment of temporomandibular dislocation, initial or subsequent.
21485.....	3	2 Complicated manipulative treatment of temporomandibular dislocation, initial or subsequent.
21490.....	4	3 Open treatment of temporomandibular dislocation.
21494.....	3	4 Treatment of closed or open hyoid fracture; with manipulation.
21495.....	4	4 Open treatment of closed or open hyoid fracture.
		Neck (soft tissues) and thorax
Incision		
21501.....	1	2 Incision and drainage, deep abscess or hematoma.
21502.....	3	2 Incision and drainage, deep abscess or hematoma; with partial rib osteotomy.
21510.....	3	3 Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess).
21555.....	1	2 Excision, benign tumor; subcutaneous.
Excision		
21556.....	2	2 Excision, benign tumor; deep, subfascial, intramuscular.
21600.....	3	2 Excision of rib, partial.
21610.....	3	2 Costotransversectomy (separate procedure).
		Abdomen
Excision		
22900.....	2	4 Excision, abdominal wall tumor, subfascial (e.g., desmoid).
		Shoulder
Incision		
23000.....	3	2 Removal of subdeltoid (or intratendinous) calcareous deposits.
23020.....	3	2 Capsular contracture release (Sever type procedure) for Erb's palsy.
23030.....	1	1 Incision and drainage; deep abscess or hematoma.
23035.....	2	3 Incision, deep, with opening of cortex (e.g., for osteomyelitis or bone abscess).
23040.....	4	3 Arthrotomy, glenohumeral joint, for infection, with exploration, drainage or removal of foreign body.
23044.....	4	4 Arthrotomy with exploration, drainage or removal of foreign body, acromioclavicular, sternoclavicular joint.
Excision		
23066.....	1	2 Biopsy, soft tissues, deep.
23076.....	1	2 Excision, benign tumor; deep, subfascial or intramuscular.
23100.....	4	2 Arthrotomy for biopsy, glenohumeral joint.
23101.....	4	6 Arthrotomy for biopsy or for excision of torn cartilage, acromioclavicular, sternoclavicular joint.
23130.....	4	5 Acromionectomy, partial or total.
23140.....	4	4 Excision or curettage of bone cyst or benign tumor of clavicle or scapula.
23150.....	4	4 Excision or curettage of bone cyst or benign tumor of proximal humerus.
*23170.....	2	2 Sequestrectomy (e.g. for osteomyelitis or bone abscess), clavicle.
*23172.....	2	2 Sequestrectomy (e.g. for osteomyelitis or bone abscess), scapula.
*23174.....	2	2 Sequestrectomy (e.g. for osteomyelitis or bone abscess), humeral head to surgical neck.
23180.....	3	4 Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), clavicle.
23182.....	3	4 Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), scapula.
23184.....	3	4 Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), proximal humerus.
23190.....	3	4 Osteotomy of scapula, partial (e.g., superior medial angle).
23195.....	3	5 Resection humeral head.
Introduction or removal		
23331.....	2	1 Removal of foreign body; deep (e.g., Neer prosthesis removal).
Repair, revision or reconstruction		
23405.....	3	2 Tenotomy; single.
23406.....	3	2 Tenotomy; multiple through same incision.
Fracture and/or dislocation		
23505.....	2	1 Treatment of closed clavicular fracture; with manipulation.
23515.....	4	3 Open treatment of closed or open clavicular fracture, with or without internal or external skeletal fixation.
23605.....	2	2 Treatment of closed humeral (surgical or anatomical neck) fracture; with manipulation.
23610.....	4	3 Treatment of open humeral (surgical or anatomical neck) fracture; with uncomplicated soft tissue closure.
23625.....	2	2 Treatment of closed greater tuberosity fracture; with manipulation.
23630.....	4	5 Open treatment of closed or open greater tuberosity fracture, with or without internal or external skeletal fixation.
23655.....	1	1 Treatment of closed shoulder dislocation, with manipulation; requiring anesthesia.
23658.....	4	3 Treatment of open shoulder dislocation, with uncomplicated soft tissue closure.
23660.....	4	3 Open treatment of closed or open shoulder dislocation.
23665.....	2	2 Treatment of closed shoulder dislocation, with fracture of greater tuberosity, with manipulation.
23670.....	4	3 Open treatment of closed or open shoulder dislocation, with fracture of greater tuberosity.
23675.....	2	2 Treatment of closed shoulder dislocation, with surgical or anatomical neck fracture, with manipulation.
23680.....	4	3 Open treatment of closed or open shoulder dislocation, with surgical or anatomical neck fracture.
Manipulation		
23700.....	2	1 Manipulation under anesthesia, including application of fixation apparatus (dislocation excluded). Humerus (Upper Arm) and Elbow
Incision		
23930.....	1	1 Incision and drainage; deep abscess or hematoma.
23935.....	2	2 Incision, deep, with opening of (e.g., cortex for osteomyelitis or bone abscess).
24000.....	2	4 Arthrotomy, elbow, for infection, with exploration, drainage or removal of foreign body.
Excision		
24075.....	2	2 Excision, benign tumor; subcutaneous.
24076.....	2	2 Excision, benign tumor; deep, subfascial or intramuscular.
24100.....	4	1 Arthrotomy, elbow; for synovial biopsy only.
24101.....	4	4 Arthrotomy, elbow; with joint exploration, with or without biopsy, with or without removal of foreign body.
*24105.....	3	3 Excision, olecranon bursa.
24110.....	3	2 Excision, or curettage of bone cyst or benign tumor, humerus.

Payment groups		
Old	New	
24115.....	4	3 Excision or curettage of bone cyst or benign tumor, humerus; with primary autogenous graft (includes obtaining graft).
24116.....	4	3 Excision or curettage of bone cyst or benign tumor, humerus; with homogenous or other nonautogenous graft.
24120.....	3	3 Excision or curettage of bone cyst or benign tumor of head or neck of radius or olecranon process.
24125.....	4	3 Excision or curettage of bone cyst or benign tumor of head or neck of radius or olecranon process; with primary autogenous graft (includes obtaining graft).
24126.....	4	3 Excision or curettage of bone cyst or benign tumor of head or neck of radius or olecranon process; with homogenous or other nonautogenous graft.
24130.....	3	3 Excision, radial head.
*24134.....	2	2 Sequestrectomy (e.g. for osteomyelitis or bone abscess), shaft or distal humerus.
*24136.....	2	2 Sequestrectomy (e.g. for osteomyelitis or bone abscess), radial head or neck.
*24138.....	2	2 Sequestrectomy (e.g. for osteomyelitis or bone abscess), olecranon process.
24140.....	2	3 Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis), humerus.
24145.....	2	3 Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis), radial head or neck.
24147.....	2	2 Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis), olecranon process.
24155.....	4	3 Resection of elbow joint (arthrectomy).
Introduction or removal		
24160.....	2	2 Implant removal; elbow joint.
24164.....	2	3 Implant removal; radial head.
24201.....	1	2 Removal of foreign body; deep.
Repair revision and reconstruction		
24301.....	3	4 Muscle or tendon transfer, any type, single (excluding 2430-24331).
24310.....	3	3 Tenotomy, open, elbow to shoulder, single, each.
*24320.....	4	3 Tenoplasty, with muscle transfer, with or without free graft, elbow to shoulder, single (Seddon-Brookes type procedure).
24330.....	4	3 Flexor-plasty, elbow, (e.g., Steindler type advancement).
24331.....	4	3 Flexor-plasty, elbow, (e.g., Steindler type advancement); with extensor advancement.
24340.....	4	3 Tenodesis for rupture of biceps tendon at elbow.
24342.....	4	3 Reinsertion of ruptured biceps tendon, distal, with or without tendon graft (includes obtaining graft).
*24350.....	4	3 Fasciotomy, lateral or medial (e.g., "tennis elbow" or epicondylitis).
*24351.....	4	3 Fasciotomy, lateral or medial (e.g., "tennis elbow" or epicondylitis); with extensor origin detachment.
*24352.....	4	3 Fasciotomy, lateral or medial (e.g., "tennis elbow" or epicondylitis); with annular ligament resection.
*24354.....	4	3 Fasciotomy, lateral or medial (e.g., "tennis elbow" or epicondylitis); with stripping.
24356.....	4	3 Fasciotomy, lateral or medial (e.g., "tennis elbow" or epicondylitis); with partial osteotomy.
24420.....	4	3 Osteoplasty, humerus (e.g., shortening or lengthening) (excluding 64876).
24470.....	4	3 Hemiepiphyseal arrest (e.g., for cubitus varus or valgus, distal humerus).
24495.....	3	2 Decompression fasciotomy, forearm, with brachial artery exploration.
Fracture and/or dislocation		
24505.....	1	1 Treatment of closed humeral shaft fracture; with manipulation.
24506.....	2	3 Treatment of closed humeral shaft fracture; percutaneous insertion of pin or rod.
24510.....	3	3 Treatment of open humeral shaft fracture, with uncomplicated soft tissue closure.
24515.....	4	4 Open treatment of closed or open humeral shaft fracture, with or without internal or external skeletal fixation.
24530.....	1	1 Treatment of closed supracondylar or transcondylar fracture, without manipulation.
24531.....	2	2 Treatment of closed supracondylar or transcondylar fracture, without manipulation; with traction (pin or skin).
24535.....	1	1 Treatment of closed supracondylar or transcondylar fracture, with manipulation.
24536.....	2	2 Treatment of closed supracondylar or transcondylar fracture, with manipulation; with traction (pin or skin).
24538.....	2	2 Treatment of closed supracondylar or transcondylar fracture, with manipulation; with percutaneous skeletal fixation.
24540.....	4	3 Treatment of open supracondylar or transcondylar fracture, with uncomplicated soft tissue closure.
24542.....	4	3 Treatment of open supracondylar or transcondylar fracture, with uncomplicated soft tissue closure; with traction (pin or skin).
24545.....	4	4 Open treatment of closed or open supracondylar or transcondylar fracture, with or without internal or external skeletal fixation.
24565.....	1	2 Treatment of closed epicondylar fracture, medial or lateral; with manipulation.
24570.....	3	2 Treatment of open epicondylar fracture, medial or lateral, with uncomplicated soft tissue closure.
24575.....	4	3 Open treatment of closed or open epicondylar fracture, medial or lateral, with or without internal or external skeletal fixation.
24577.....	1	1 Treatment of closed condylar fracture, medial or lateral; with manipulation.
24578.....	3	2 Treatment of open condylar fracture, medial or lateral, with uncomplicated soft tissue closure.
24579.....	4	3 Open treatment of closed or open condylar fracture, medial or lateral, with or without internal or external skeletal fixation.
24580.....	1	2 Treatment of closed comminuted elbow fracture (fracture distal humerus and/or proximal ulna and/or proximal radius), treatment with traction (pin or skin); without manipulation.
24581.....	1	1 Treatment of closed comminuted elbow fracture (fracture distal humerus and/or proximal ulna and/or proximal radius), treatment with traction (pin or skin); with manipulation.
24583.....	4	3 Treatment of open comminuted elbow fracture (fracture distal humerus and/or proximal ulna and/or proximal radius), with uncomplicated soft tissue closure.
24585.....	4	4 Open treatment of closed or open comminuted elbow fracture (fracture distal humerus and/or proximal ulna/radius), with or without internal or external skeletal fixation.
24586.....	4	4 Open treatment of closed or open comminuted elbow fracture (fracture distal humerus and/or proximal ulna/radius), with or without internal or external skeletal fixation; with elbow resection.
24605.....	1	2 Treatment of closed elbow dislocation; requiring anesthesia.
24610.....	3	3 Treatment of open elbow dislocation, with uncomplicated soft tissue closure.
24615.....	3	3 Open treatment of closed or open elbow dislocation.
24620.....	2	2 Treatment of closed Monteggia type of fracture dislocation at elbow (fracture proximal end of ulna with dislocation of radial head).
24625.....	4	3 Treatment of open Monteggia type of fracture dislocation at elbow (fracture proximal end of ulna with dislocation of radial head), with uncomplicated soft tissue closure.
24635.....	4	3 Open treatment of closed or open Monteggia type of fracture dislocation at elbow (fracture proximal end of ulna with dislocation of radial head), with or without internal or external skeletal fixation.
24655.....	1	1 Treatment of closed radial head or neck fracture; with manipulation with complicated soft tissue closure.
24665.....	4	4 Open treatment of closed or open radial head or neck fracture with or without internal fixation or radial head excision.

Payment groups			
Old	New		
24666.....	4	4	Open treatment of closed or open radial head or neck fracture, with or without internal fixation or radial head excision; with implant.
24675.....	1	1	Treatment of closed ulnar fracture, proximal end (olecranon process); with manipulation.
24680.....	3	2	Treatment of open ulnar fracture, proximal end (olecranon process), with uncomplicated soft tissue closure.
24685.....	4	3	Open treatment of closed or open ulnar fracture proximal end (olecranon process), with or without internal or external skeletal fixation.
Forearm and Wrist			
Incision			
*25000.....	2	3	Tendon sheath incision; at radial styloid for deQuervain's disease.
25005.....	2	3	Tendon sheath incision; at wrist for other stenosing tenosynovitis.
*25020.....	4	3	Decompression fasciotomy, flexor and/or extensor compartment.
*25023.....	4	3	Decompression fasciotomy, flexor and/or extensor compartment; with debridement of nonviable muscle and/or nerve.
25028.....	1	1	Incision and drainage, deep abscess or hematoma.
25035.....	2	2	Incision, deep, with opening of cortex (e.g., for osteomyelitis or bone abscess).
25040.....	2	4	Arthrotomy radiocarpal or mediocarpal joint, for infection, with exploration, drainage, or removal of loose or foreign body.
Excision			
25066.....	1	4	Biopsy, soft tissues; deep.
25076.....	1	3	Excision, benign tumor, deep, subfascial or intramuscular.
25085.....	3	3	Capsulotomy, wrist (e.g., for contracture).
25100.....	2	2	Arthrotomy, wrist joint, for biopsy.
25101.....	3	3	Arthrotomy, wrist joint, with joint exploration, with or without biopsy, with or without removal of foreign body.
25107.....	3	3	Arthrotomy distal radioulnar joint for repair of triangular cartilage complex.
25110.....	3	3	Excision, lesion of tendon sheath.
*25111.....	3	3	Excision, of ganglion, wrist (dorsal or volar); primary.
*25112.....	3	4	Excision of ganglion, wrist (dorsal or volar); recurrent.
25120.....	3	3	Excision or curettage of bone cyst or benign tumor of radius or ulna (excluding head or neck of radius and olecranon process).
25125.....	4	3	Excision or curettage of bone cyst or benign tumor of radius or ulna (excluding head or neck of radius and olecranon process); with primary autogenous graft (including obtaining graft).
25126.....	4	3	Excision or curettage of bone cyst or benign tumor of radius or ulna (excluding head or neck of radius and olecranon process); with homogenous or other nonautogenous graft.
25130.....	3	3	Excision or curettage of bone cyst or benign tumor of carpal bones.
25135.....	3	3	Excision or curettage of bone cyst or benign tumor of carpal bones; with primary autogenous graft (includes obtaining graft).
25136.....	4	3	Excision or curettage of bone cyst or benign tumor of carpal bones; with homogenous or other nonautogenous graft.
25145.....	2	2	Sequestrectomy (e.g. for osteomyelitis or bone abscess).
25150.....	2	2	Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis); ulna.
25151.....	2	2	Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis); radius.
25210.....	3	3	Carpectomy; one bone.
25215.....	3	4	Carpectomy; all bones of proximal row.
25230.....	3	4	Radial styloidectomy (separate procedure).
25240.....	3	4	Excision distal ulna (Darrach type procedure).
25248.....	2	2	Exploration for removal of deep foreign body.
Repair, revision or reconstruction			
*25260.....	3	4	Repair, tendon or muscle, flexor; primary, single, each tendon or muscle.
*25263.....	3	2	Repair, tendon or muscle, flexor; secondary, single, each tendon or muscle.
*25265.....	4	3	Repair tendon or muscle, flexor; secondary, with free graft (includes obtaining graft), each tendon or muscle.
*25270.....	3	4	Repair, tendon or muscle, extensor; primary, single, each tendon or muscle.
*25272.....	3	3	Repair, tendon or muscle, extensor; secondary, single, each tendon or muscle.
25274.....	4	4	Repair, tendon or muscle, extensor, secondary, with tendon graft (includes obtaining graft), each tendon.
25280.....	3	4	Lengthening or shortening of flexor or extensor tendon, single, each tendon.
25290.....	3	3	Tenotomy, open, single, flexor or extensor tendon, each tendon.
25295.....	3	3	Tenolysis, single flexor or extensor tendon, each tendon.
25300.....	3	3	Tenodesis at wrist; flexors of fingers.
25301.....	3	3	Tenodesis at wrist; extensors of fingers.
*25310.....	4	3	Tendon transplantation or transfer, flexor or extensor, single; each tendon.
*25312.....	4	4	Tendon transplantation or transfer, flexor or extensor, single; with tendon graft(s) (includes obtaining graft), each tendon.
25315.....	3	3	Flexor origin slide for cerebral palsy.
25316.....	3	3	Flexor origin slide for cerebral palsy; with tendon(s) transfer.
25317.....	3	3	Flexor origin slide for Volkmann contracture.
25318.....	3	3	Flexor origin slide for Volkmann contracture; with tendon(s) transfer.
25320.....	4	3	Capsulorrhaphy or reconstruction, capsulectomy, wrist (includes synovectomy, resection of capsule, tendon insertions).
25390.....	4	3	Osteoplasty radius OR ulna; shortening.
25391.....	4	4	Osteoplasty, radius OR ulna; lengthening with autogenous bone graft.
25392.....	4	3	Osteoplasty, radius AND ulna; shortening (excluding 64876).
25393.....	4	4	Osteoplasty, radius AND ulna; lengthening with autogenous bone graft.
25450.....	4	3	Epiphyseal arrest by epiphysiodesis or stapling; distal radius OR ulna.
25455.....	4	3	Epiphyseal arrest by epiphysiodesis or stapling; distal radius AND ulna.
Fracture and/or dislocation			
25505.....	1	1	Treatment of closed radial shaft fracture; with manipulation.
25510.....	3	2	Treatment of open radial shaft fracture, with uncomplicated soft tissue closure.
25515.....	4	3	Open treatment of closed or open radial shaft fracture, with or without internal or external skeletal fixation.
25535.....	1	1	Treatment of closed ulnar shaft fracture; with manipulation.
25540.....	3	2	Treatment of open ulnar shaft fracture, with uncomplicated soft tissue closure.
25545.....	4	3	Open treatment of closed or open ulnar shaft fracture, with or without internal or external skeletal fixation.
25565.....	1	2	Treatment of closed radial and ulnar shaft fractures; with manipulation.
25570.....	3	3	Treatment of open radial and ulnar shaft fractures, with uncomplicated soft tissue closure.
25575.....	4	3	Open treatment of closed or open radial and ulnar shaft fractures, with or without internal or external skeletal fixation.

Payment groups			
Old	New		
25605.....	1	3	Treatment of closed distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid; with manipulation.
25610.....	2	3	Treatment of closed, complex, distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, requiring manipulation; without external skeletal fixation or percutaneous pinning.
25611.....	2	3	Treatment of closed, complex, distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, requiring manipulation; percutaneous pinning or pins and plaster technique.
25615.....	3	4	Treatment of open distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, with uncomplicated soft tissue closure.
25620.....	4	5	Open treatment of closed or open distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, with or without internal or external skeletal fixation.
25626.....	3	2	Treatment of open carpal scaphoid (navicular) fracture, with uncomplicated soft tissue closure.
25628.....	4	3	Open treatment of closed or open carpal scaphoid (navicular) fracture, with or without skeletal fixation.
25635.....	1	1	Treatment of closed carpal bone fracture (excluding carpal scaphoid (navicular)); with manipulation, each bone.
25640.....	4	2	Treatment of open carpal bone fracture (excluding carpal scaphoid (navicular)), with uncomplicated soft tissue closure, each bone.
25645.....	4	3	Open treatment of closed or open carpal bone fracture (excluding carpal scaphoid (navicular)); each bone.
25660.....	1	1	Treatment of closed radiocarpal or intercarpal dislocation, one or more bones, with manipulation.
25665.....	3	3	Treatment of open radiocarpal or intercarpal dislocation, one or more bones, with uncomplicated soft tissue closure.
25670.....	4	3	Open treatment of closed or open radiocarpal or intercarpal dislocation, one or more bones.
25675.....	1	1	Treatment of closed distal radioulnar dislocation with manipulation.
25676.....	3	2	Open treatment of closed or open distal radioulnar dislocation, acute or chronic.
25680.....	1	2	Treatment of closed trans-scaphoperilunar type of fracture dislocation, with manipulation.
25685.....	3	3	Open treatment of closed or open trans-scaphoperilunar type of fracture dislocation.
25690.....	1	1	Treatment of lunate dislocation, with manipulation.
25695.....	3	2	Open treatment of lunate dislocation.
		Hands and Fingers	
Incision			
26011.....	1	1	Drainage of finger abscess; complicated (e.g., felon, etc.).
26020.....	1	2	Drainage of tendon sheath, one digit and/or palm.
26025.....	1	1	Drainage of palmar bursa; single, ulnar or radial.
26030.....	1	2	Drainage of palmar bursa; multiple or complicated.
26034.....	2	2	Incision, deep, with opening of cortex (e.g., for osteomyelitis or bone abscess).
26035.....	2	4	Decompression fingers and/or hand, injection injury (e.g., grease gun, etc.).
*26040.....	4	4	Fasciotomy, palmar, for Dupuytren's contracture; closed (subcutaneous).
*26045.....	4	3	Fasciotomy, palmar, for Dupuytren's contracture; open, partial.
*26055.....	1	3	Tendon sheath incision for trigger finger.
*26060.....	1	2	Tenotomy, subcutaneous, single, each digit.
26070.....	2	2	Arthrotomy, for infection, with exploration, drainage or removal of loose or foreign body; carpometacarpal joint.
26075.....	2	4	Arthrotomy with exploration, drainage or removal of loose or foreign body; metacarpophalangeal joint.
26080.....	2	4	Arthrotomy with exploration, drainage or removal of loose or foreign body; interphalangeal joint, each.
Excision			
26100.....	3	2	Arthrotomy for synovial biopsy; carpometacarpal joint.
26105.....	3	1	Arthrotomy for synovial biopsy; metacarpophalangeal joint.
26110.....	3	1	Arthrotomy for synovial biopsy; interphalangeal joint, each.
26115.....	3	2	Excision of benign tumor; subcutaneous.
26116.....	3	2	Excision of benign tumor; deep, subfascial, intramuscular.
*26120.....	4	4	Fasciectomy, palmar, simple, for Dupuytren's contracture; partial excision.
*26122.....	4	3	Fasciectomy, palmar, simple, for Dupuytren's contracture; up to one-half palmar fascia, with single digit involvement, with or without Z-plasty or other local tissue rearrangement.
26124.....	4	4	Fasciectomy, palmar, complicated, requiring skin grafting (includes obtaining graft); with single digit involvement.
26126.....	4	4	Fasciectomy, palmar, complicated, requiring skin grafting (includes obtaining graft); each additional digit.
*26128.....	4	4	Fasciectomy, palmar, complicated, requiring skin grafting (includes obtaining graft); each finger joint release.
26135.....	4	4	Synovectomy, metacarpophalangeal joint including intrinsic release and extensor hood reconstruction, each digit.
*26140.....	4	2	Synovectomy, proximal interphalangeal joint, including extensor reconstruction, each interphalangeal joint.
*26145.....	4	3	Synovectomy tendon sheath, radical (tenosynovectomy), flexor, palm or finger, single, each digit.
26160.....	3	3	Excision of lesion of tendon sheath or capsule (e.g., cyst or ganglion).
26170.....	3	3	Excision of tendon, palm, flexor, single (separate procedure), each.
26180.....	3	3	Excision of tendon, finger, flexor (separate procedure).
26200.....	3	2	Excision or curettage of bone cyst or benign tumor of metacarpal.
26205.....	3	3	Excision or curettage of bone cyst or benign tumor of metacarpal; with autogenous graft (includes obtaining graft).
26210.....	3	2	Excision or curettage of bone cyst or benign tumor or proximal, middle or distal phalanx.
26215.....	3	3	Excision or curettage of bone cyst or benign tumor of proximal, middle or distal phalanx; with autogenous graft (includes obtaining graft).
26230.....	3	2	Partial excision (craterization saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis); metacarpal.
26235.....	3	3	Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis); proximal or middle phalanx.
26250.....	4	3	Radical resection (ostectomy) for tumor, metacarpal.
26225.....	4	3	Radical resection (ostectomy) for tumor, metacarpal; with autogenous graft (includes obtaining graft).
26261.....	4	3	Radical resection (ostectomy) for tumor, proximal or middle phalanx; with autogenous graft (includes obtaining graft).
Repair, revision or reconstruction			
*26350.....	3	1	Flexor tendon repair or advancement, single, not in "no man's land"; primary or secondary without free graft, each tendon.
*26352.....	4	3	Flexor tendon repair or advancement, single, not in "no man's land"; secondary with free graft (includes obtaining graft), each tendon.
*26356.....	3	4	Flexor tendon repair or advancement, single, in "no man's land"; primary, each tendon.
*26358.....	4	4	Flexor tendon repair or advancement, single, in "no man's land"; secondary with free graft (includes obtaining graft), each tendon.
*26370.....	3	4	Profundus tendon repair or advancement, with intact sublimis; primary.
*26372.....	4	4	Profundus tendon repair or advancement, with intact sublimis; secondary with free graft (includes obtaining graft).
*26373.....	3	3	Profundus tendon repair or advancement, with intact sublimis; secondary without free graft.

Payment groups			
Old	New		
*26390.....	3	4	Flexor tendon excision, implantation of plastic tube or rod for delayed tendon graft.
*26392.....	4	3	Removal of tube or rod and insertion of tendon graft (includes obtaining graft).
*26410.....	3	3	Extensor tendon repair, dorsum of hand, single, primary or secondary; without free graft, each tendon.
*26412.....	4	3	Extensor tendon repair, dorsum of hand, single, primary or secondary; with free graft (includes obtaining graft) each tendon.
*26418.....	3	3	Extensor tendon repair, dorsum of finger, single, primary or secondary; without free graft, each tendon.
*26420.....	4	4	Extensor tendon repair, dorsum of finger, single, primary or secondary; with free graft (includes obtaining graft), each tendon.
*26426.....	4	3	Extensor tendon repair, central slip repair, secondary (boutonniere deformity); using local tissues.
*26428.....	4	3	Extensor tendon repair, central slip repair, secondary (boutonniere deformity); with free graft (includes obtaining graft).
*26432.....	4	3	Extensor tendon repair, distal insertion ("mallet finger"), closed, splinting with or without percutaneous pinning.
*26433.....	3	3	Extensor tendon repair, open, primary or secondary repair; without graft.
*26434.....	4	3	Extensor tendon repair, open, primary or secondary repair; with free graft (includes obtaining graft).
26440.....	3	3	Tenolysis, simple, flexor tendon; palm OR finger, single, each tendon.
26442.....	3	3	Tenolysis, simple, flexor tendon; palm AND finger, each tendon.
26445.....	3	3	Tenolysis, extensor tendon, dorsum of hand or finger; each tendon.
26449.....	4	3	Tenolysis, complex, extensor tendon, dorsum of hand or finger, including hand and forearm.
*26450.....	1	3	Tenotomy, flexor, single, palm, open, each.
*26455.....	1	3	Tenotomy, flexor, single finger, open, each.
*26460.....	1	3	Tenotomy, extensor, hand or finger, single, open, each.
26471.....	2	2	Tenodesis; for proximal interphalangeal joint stabilization.
26474.....	2	2	Tenodesis; for distal joint stabilization.
26476.....	3	1	Tendon lengthening, extensor, single, each.
26477.....	3	1	Tendon shortening, extensor, single, each.
*26480.....	4	3	Tendon transfer or transplant, carpometacarpal area.
*26483.....	4	3	Tendon transfer or transplant, carpometacarpal area.
*26485.....	4	2	Tendon transfer or transplant, palmar, single, each tendon; without free tendon graft.
*26489.....	4	3	Tendon transfer or transplant, palmar, single, each tendon; with free tendon graft (includes obtaining graft), each tendon.
26490.....	4	3	Opponens plasty; sublimis tendon transfer type.
26492.....	4	3	Opponens plasty; tendon transfer with graft (includes obtaining graft).
26494.....	4	3	Opponens plasty; hypothenar muscle transfer.
26496.....	4	3	Opponens plasty; other methods.
26497.....	4	3	Tendon transfer to restore intrinsic function; ring and small finger.
26498.....	4	4	Tendon transfer to restore intrinsic function; all four fingers.
26499.....	4	3	Correction claw finger; other methods.
26500.....	4	4	Tendon pulley reconstruction; with local tissues (separate procedure).
26502.....	4	4	Tendon pulley reconstruction; with tendon or facial graft (includes obtaining graft) (separate procedure).
26508.....	4	3	Thenar muscle release for thumb contracture.
26510.....	4	3	Cross intrinsic transfer.
26516.....	2	1	Capsulodesis for M-P joint stabilization; single digit.
26517.....	2	3	Capsulodesis for M-P joint stabilization; two digits.
26518.....	3	3	Capsulodesis for M-P joint stabilization; three or four digits.
*26520.....	3	3	Capsulectomy for contracture; metacarpophalangeal joint, single, each.
*26525.....	3	3	Capsulectomy for contracture; interphalangeal joint, single, each.
*26530.....	4	3	Arthroplasty, metacarpophalangeal joint; single, each.
*26531.....	4	6	Arthroplasty, metacarpophalangeal joint; with prosthetic implant, single, each.
*26535.....	4	4	Arthroplasty interphalangeal joint; single, each.
*26536.....	4	5	Arthroplasty interphalangeal joint; with prosthetic implant, single, each.
*26540.....	4	4	Primary repair of collateral ligament, metacarpophalangeal joint.
*26541.....	4	6	Reconstruction, collateral ligament, metacarpophalangeal joint; with tendon or facial graft (includes obtaining graft).
26542.....	4	4	Primary repair of collateral ligament, metacarpophalangeal joint; with local tissue.
*26545.....	4	4	Reconstruction, collateral ligament, interphalangeal joint, single, including graft, each joint.
26552.....	4	4	Reconstruction thumb with toe.
26555.....	4	3	Positional change of other finger.
26557.....	4	3	Toe to finger transfer; first stage.
26558.....	4	2	Toe to finger transfer; each delay.
26559.....	4	2	Toe to finger transfer; second stage.
*26567.....	4	4	Osteotomy for correction of deformity; phalanx.
26568.....	4	3	Osteoplasty for lengthening of metacarpal or phalanx.
26570.....	4	2	Bone graft, (includes obtaining graft); metacarpal.
26574.....	4	2	Bone graft, (includes obtaining graft); phalanx.
Fractures and/or dislocations			
26605.....	1	2	Treatment of closed metacarpal fracture, single; with manipulation, each bone.
26607.....	2	2	Treatment of closed metacarpal fracture, single, with manipulation, with skeletal fixation, each bone.
26610.....	2	4	Treatment of open metacarpal fracture, single, with uncomplicated soft tissue closure, each bone.
26645.....	1	1	Treatment of closed carpometacarpal fracture dislocation, thumb (Bennett fracture), with manipulation.
26650.....	2	2	Treatment of closed carpometacarpal fracture dislocation, thumb (Bennett fracture), with manipulation; with skeletal fixation.
26655.....	3	3	Treatment of open carpometacarpal fracture dislocation, thumb (Bennett fracture), with uncomplicated soft tissue closure.
26660.....	3	3	Treatment of open carpometacarpal fracture dislocation, thumb (Bennett fracture), with uncomplicated soft tissue closure; with skeletal fixation.
26665.....	3	4	Open treatment of closed or open carpometacarpal fracture dislocation, thumb (Bennett fracture), with or without internal or external skeletal fixation.
26675.....	1	2	Treatment of closed carpometacarpal dislocation, other than Bennett fracture, single, with manipulation; requiring anesthesia.
26676.....	2	2	Treatment of closed carpometacarpal dislocation, other than Bennett fracture, single, with manipulation; with percutaneous pinning.
26680.....	2	2	Treatment of open carpometacarpal dislocation, other than Bennett fracture, single, with uncomplicated soft closure.

Payment groups		
Old	New	
26685.....	3	3 Open treatment of closed or open carpometacarpal dislocation, other than Bennett fracture; single, with or without internal or external skeletal fixation.
26686.....	3	3 Open treatment of closed or open carpometacarpal dislocation, other than Bennett fracture; complex, multiple or delayed reduction.
26705.....	1	2 Treatment of closed metacarpophalangeal dislocation, single, with manipulation; requiring anesthesia.
26706.....	2	2 Treatment of closed metacarpophalangeal dislocation, single, with manipulation; with percutaneous pinning.
26710.....	2	2 Treatment of open metacarpophalangeal dislocation, single, with uncomplicated soft tissue closure.
26715.....	3	4 Open treatment of closed or open metacarpophalangeal dislocation, single, with or without internal or external skeletal fixation.
26727.....	2	6 Treatment of unstable phalangeal shaft fracture, proximal or middle phalanx, finger or thumb, with manipulation, requiring traction or fixation, each.
26730.....	2	2 Treatment of open phalangeal shaft fracture, proximal or middle phalanx, finger or thumb, with uncomplicated soft tissue closure, each.
26735.....	3	4 Open treatment of closed or open phalangeal shaft fracture, proximal or middle phalanx, finger or thumb, with or without internal or external skeletal fixation, each.
26744.....	2	2 Treatment of open articular fracture, involving metacarpophalangeal or proximal interphalangeal joint, with uncomplicated soft tissue closure, each.
26746.....	3	5 Open treatment of closed or open articular fracture, involving metacarpophalangeal or proximal interphalangeal joint, each.
26765.....	3	4 Open treatment of closed or open distal phalangeal fracture, finger or thumb, each.
26780.....	2	2 Treatment of open interphalangeal joint dislocation, single, with uncomplicated soft tissue closure.
26785.....	3	2 Open treatment of closed or open interphalangeal joint dislocation, single.
Arthrodesis		
*26820.....	4	5 Fusion in opposition, thumb, with autogenous graft (includes obtaining graft).
*26841.....	4	4 Arthrodesis, carpometacarpal joint, thumb, with or without internal fixation.
*26842.....	4	4 Arthrodesis, carpometacarpal joint, thumb, with or without internal fixation; with autogenous graft (includes obtaining graft).
*26843.....	4	3 Arthrodesis, carpometacarpal joint, digits, other than thumb.
*26844.....	4	3 Arthrodesis, carpometacarpal joint, digits, other than thumb; with autogenous graft (includes obtaining graft).
*26860.....	4	3 Arthrodesis, interphalangeal joint, with or without internal fixation.
*26861.....	4	2 Arthrodesis, interphalangeal joint, with or without internal fixation; each additional interphalangeal joint.
*26862.....	4	4 Arthrodesis, interphalangeal joint, with or without internal fixation; with autogenous graft (includes obtaining graft).
*26863.....	4	3 Arthrodesis, interphalangeal joint, with or without internal fixation; with autogenous graft (includes obtaining graft), each additional joint.
Amputation		
*26910.....	2	3 Amputation, metacarpal, with finger or thumb (ray amputation), single, with or without interosseous transfer.
*26951.....	2	2 Amputation, finger or thumb, primary or secondary, any joint or phalanx, single, including neurectomies; with direct closure.
*26952.....	4	4 Amputation, finger or thumb, primary or secondary, any joint or phalanx, single, including neurectomies; with local advancement flaps (V-Y, hood).
Incision		
26990.....	2	1 Incision and drainage; deep abscess or hematoma.
26991.....	2	1 Incision and drainage; infected bursa.
26992.....	2	2 Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess).
27000.....	3	2 Tenotomy, adductor, subcutaneous, closed (separate procedure).
27001.....	4	2 Tenotomy, adductor, subcutaneous, open; unilateral.
27002.....	4	2 Tenotomy, adductor, subcutaneous, open; bilateral.
27003.....	4	3 Tenotomy, adductor, subcutaneous, open, with obturator neurectomy; unilateral.
27004.....	4	3 Tenotomy, adductor, subcutaneous, open, with obturator neurectomy; bilateral.
27030.....	4	3 Arthrotomy, hip, for infection, with drainage.
27033.....	4	3 Arthrotomy, hip, for exploration or removal of loose or foreign body.
27035.....	4	4 Hip joint denervation, intrapelvic or extrapelvic intra-articular branches of sciatic, femoral or obturator nerves.
Excision		
27040.....	4	2 Biopsy, soft tissues; superficial.
27041.....	4	2 Biopsy, soft tissues; deep.
27047.....	4	2 Excision, benign tumor; subcutaneous.
27048.....	4	3 Excision, benign tumor; deep, subfascial, intramuscular.
27052.....	4	3 Arthrotomy for biopsy; hip joint.
27065.....	4	4 Excision of bone cyst or benign tumor; superficial (wing of ilium, symphysis pubis, or greater trochanter of femur) with or without autogenous bone graft.
27066.....	4	5 Excision of bone cyst or benign tumor; deep, with or without bone graft.
27080.....	4	2 Coccygectomy, primary.
Introduction and/or removal		
27087.....	2	3 Removal of foreign body; deep.
27095.....	1	1 Injection procedure for hip arthrography; with anesthesia.
Fractures and/or dislocations		
27201.....	4	2 Treatment of open coccygeal fracture.
27202.....	4	2 Open treatment of closed or open coccygeal fracture.
Manipulation		
27275.....	2	2 Manipulation, hip joint, requiring general anesthesia.
Incision		
27301.....	2	3 Incision and drainage of deep abscess, infected bursa, or hematoma.
27303.....	2	2 Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess).
*27305.....	4	2 Fasciotomy, iliotibial (tenotomy), open.
*27306.....	1	3 Tenotomy, subcutaneous, closed, adductor or hamstring, (separate procedure); single.
*27307.....	1	3 Tenotomy, subcutaneous, closed, adductor or hamstring, (separate procedure); multiple.
27310.....	4	4 Arthrotomy, knee, for infection, with exploration, drainage or removal of foreign body.

Pelvis and Hip Joint

Femur (Thigh Region) and Knee Joint

Payment groups		
Old	New	
*27315	4	2 Neurectomy, hamstring muscle.
*27320	4	2 Neurectomy, popliteal (gastrocnemius).
Excision		
27324	2	1 Biopsy, soft tissues; deep.
27327	1	2 Excision, benign tumor; subcutaneous.
27328	2	3 Excision, benign tumor; deep, subfascial, or intramuscular.
27330	4	4 Arthrotomy, knee; for synovial biopsy only.
27345	4	4 Excision of synovial cyst of popliteal space (Baker's cyst).
27350	4	4 Patellectomy or hemipatellectomy.
27355	4	3 Excision or curettage of bone cyst or benign tumor of femur.
27360	4	5 Partial excision (craterization, saucerization or diaphysectomy) of bone, (e.g., for osteomyelitis), femur, proximal tibia and/or fibula.
Introduction and/or removal		
27372	3	6 Removal foreign body, deep.
Repair, revision or reconstruction		
27390	4	1 Tenotomy, open, hamstring, knee to hip; single.
27391	4	2 Tenotomy, open, hamstring, knee to hip; multiple, one leg.
27392	4	3 Tenotomy, open, hamstring, knee to hip; multiple, bilateral.
27393	4	2 Lengthening of hamstring, tendon; single.
27394	4	3 Lengthening of hamstring, tendon; multiple, one leg.
27395	4	3 Lengthening of hamstring, tendon; multiple, bilateral.
27396	4	3 Transplant, hamstring tendon to patella; single.
27397	4	3 Transplant, hamstring tendon to patella; multiple.
27400	4	3 Tendon or muscle transfer, hamstrings to femur (Eggers type procedure).
27420	4	3 Reconstruction for recurrent dislocating patella; (Hauser type procedure).
27422	4	6 Reconstruction for recurrent dislocating patella; with extensor realignment and/or muscle advancement or release (Campbell, Goldwaite, etc., type procedure).
27424	4	3 Reconstruction for recurrent dislocating patella; with patellectomy.
27425	4	6 Lateral retinacular release (any method).
27430	4	4 Quadriceps plasty (Bennett or Thompson type).
27435	4	4 Capsulotomy, knee, posterior capsular release.
Fractures and/or dislocations		
27522	3	3 Treatment of open patellar fracture, with uncomplicated soft tissue closure.
27524	4	3 Open treatment of closed or open patellar fracture, with repair and/or excision.
Excision		
27532	1	1 Treatment of closed tibial fracture, proximal (plateau); with manipulation.
Fractures and/or dislocations		
27534	3	2 Treatment of open tibial fracture, proximal (plateau), with uncomplicated soft tissue closure.
Excision		
27552	1	1 Treatment of closed knee dislocation; requiring anesthesia.
27562	1	1 Treatment of closed patellar dislocation; requiring anesthesia.
Fractures and/or dislocations		
27564	4	2 Treatment of open patellar dislocation, with uncomplicated soft tissue closure.
27566	4	2 Open treatment of closed or open patellar dislocation, with or without partial or total patellectomy.
Manipulation		
27570	2	1 Manipulation of knee joint under general anesthesia (includes application of traction or other fixation devices). Leg (tibia and fibula) and ankle joint
Incision		
27603	2	2 Incision and drainage; deep abscess or hematoma.
*27605	1	1 Tenotomy, Achilles tendon, subcutaneous (separate procedure); local anesthesia.
*27606	1	1 Tenotomy, Achilles tendon, subcutaneous (separate procedure); general anesthesia.
27607	2	2 Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess).
27610	2	2 Arthrotomy, ankle, with exploration, drainage or removal of loose or foreign body.
27612	4	3 Arthrotomy, ankle, posterior capsular release, with or without archilles tendon lengthening.
Excision		
27620	3	4 Arthrotomy, ankle, for biopsy.
27630	3	3 Excision of lesion of tendon sheath or capsule (e.g., cyst or ganglion).
27635	3	3 Excision or curettage of bone cyst or benign tumor, tibia or fibula.
27637	4	3 Excision or curettage of bone cyst, or benign tumor, tibia or fibula; with primary autogenous graft (includes obtaining graft).
27638	4	3 Excision or curettage of bone cyst, or benign tumor, tibia or fibula; with primary homogenous graft.
27640	4	2 Partial excision (craterization, saucerization, or diaphysectomy) of bone, (e.g., for osteomyelitis); tibia.
27641	4	2 Partial excision (craterization, saucerization, or diaphysectomy) of bone, (e.g., for osteomyelitis); fibula.
Repair, revision or reconstruction		
*27650	3	3 Repair, primary, open or percutaneous, ruptured Achilles tendon.
*27652	4	3 Repair, primary, open or percutaneous, ruptured Achilles tendon; with graft (includes obtaining graft).
*27654	4	3 Suture, secondary, ruptured Achilles tendon, with or without graft.
*27656	3	2 Repair, fascial defect of leg.
*27658	3	1 Repair or suture of flexor tendon of leg; primary, without free graft, single, each.
*27659	4	2 Repair or suture of flexor tendon of leg; secondary with or without free graft, single tendon, each.
*27664	3	2 Repair or suture of extensor tendon of leg; primary, without free graft, single, each.
*27665	4	2 Repair or suture of extensor tendon of leg; secondary with or without free graft, single tendon, each.
*27675	4	2 Repair for dislocating peroneal tendons; without fibular osteotomy.
*27676	4	3 Repair for dislocating peroneal tendons; with fibular osteotomy.
27680	3	3 Tenolysis, including tibia, fibula and ankle flexor; single.
27681	4	2 Tenolysis, including tibia, fibula and ankle flexor; multiple (through same incision), each.
27685	3	3 Lengthening or shortening of tendon; single (separate procedure).
27686	4	3 Lengthening or shortening of tendon; multiple (through same incision), each.

Payment groups			
Old	New		
27690.....	4	4	Transfer or transplant of single tendon (with muscle redirection or rerouting); superficial (e.g., anterior tibial extensors into midfoot).
27691.....	4	4	Transfer or transplant of single tendon (with muscle redirection or rerouting); anterior tibial or posterior tibial through interosseous space.
27692.....	4	3	Transfer or transplant of single tendon (with muscle redirection or rerouting); each additional tendon.
Fractures and/or dislocations			
27756.....	4	3	Open treatment of closed or open tibial shaft fracture, with internal skeletal fixation; simple.
27758.....	4	4	Open treatment of closed or open tibial shaft fracture, with internal or external skeletal fixation; complicated.
27764.....	3	2	Treatment of open distal tibial fracture (medial malleolus), with uncomplicated soft tissue closure.
27766.....	3	3	Open treatment of closed or open distal tibial fracture (medial malleolus), with fixation.
27781.....	1	1	Treatment of closed proximal fibula or shaft fracture; with manipulation.
27782.....	3	2	Treatment of open proximal fibula or shaft fracture, with uncomplicated soft tissue closure.
27784.....	4	3	Open treatment of closed or open proximal fibula or shaft fracture, with or without internal or external skeletal fixation.
27790.....	3	3	Treatment of open distal fibular fracture (lateral malleolus), with uncomplicated soft tissue closure.
27792.....	4	3	Open treatment of closed or open distal fibular fracture (lateral malleolus), with fixation.
27802.....	1	1	Treatment of closed tibia and fibula fractures, shafts; with manipulation.
27804.....	3	3	Treatment of open tibia and fibula fractures, shafts, with uncomplicated soft tissue closure (e.g., "pins above and below").
27842.....	1	1	Treatment of ankle dislocation; requiring anesthesia.
27844.....	3	2	Treatment of open ankle dislocation, with uncomplicated soft tissue closure.
27846.....	4	3	Open treatment of closed or open ankle dislocation.
27848.....	4	3	Open treatment of closed or open ankle dislocation; with fixation.
Manipulation			
27860.....	1	1	Manipulation of ankle under general anesthesia (includes application of traction or other fixation apparatus).
Foot			
Incision			
28002.....	2	3	Deep infection, below fascia, requiring deep dissection, with or without tendon sheath involvement; single bursal space, specify.
28003.....	2	3	Deep infection, below fascia, requiring deep dissection, with or without tendon sheath involvement; multiple areas.
28005.....	2	3	Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess).
*28008.....	4	3	Fasciotomy, plantar and/or toe, subcutaneous.
*28010.....	1	2	Tenotomy, subcutaneous, toe; single.
*28011.....	1	2	Tenotomy, subcutaneous, toe; multiple.
*28030.....	4	4	Neurectomy of intrinsic musculature of foot.
28035.....	4	4	Tarsal tunnel release (posterior tibial nerve decompression).
Excision			
28045.....	2	3	Excision, benign tumor; deep, subfascial, intramuscular.
28050.....	3	2	Arthrotomy for synovial biopsy; intertarsal or tarsometatarsal joint.
28062.....	4	3	Fasciectomy, excision of plantar fascia; radical (separate procedure).
*28072.....	4	3	Synovectomy; metatarsophalangeal joint, each.
*28080.....	3	3	Excision of Morton neuroma, single, each.
*28086.....	4	2	Synovectomy, tendon sheath; flexor.
*28088.....	4	2	Synovectomy, tendon sheath; extensor.
*28090.....	4	3	Excision of lesion of tendon or fibrous sheath or capsule (including synovectomy) (cyst or ganglion); foot.
*28092.....	4	3	Excision of lesion of tendon or fibrous sheath or capsule (including synovectomy) (cyst or ganglion); toes.
28102.....	4	3	Excision or curettage of bone cyst or benign tumor, talus or calcaneus; with iliac or other autogenous bone graft (includes obtaining graft).
28103.....	4	3	Excision or curettage of bone cyst or benign tumor, talus or calcaneus; with homogenous bone graft.
28107.....	3	3	Excision or curettage of bone cyst or benign tumor, tarsal or metatarsal bones, except talus or calcaneus; with homogenous bone graft.
*28110.....	3	3	Osteotomy, partial excision, fifth metatarsal head (bunionette) (separate procedure).
*28111.....	3	3	Osteotomy complete excision; first metatarsal head.
*28112.....	3	3	Osteotomy; complete excision other metatarsal head (second, third, or fourth).
*28113.....	3	3	Osteotomy; complete excision fifth metatarsal head.
*28114.....	3	3	Osteotomy; complete excision all metatarsal heads, with proximal phalangectomy, excluding first metatarsal (Clayton type procedure).
28118.....	3	4	Osteotomy, calcaneus; partial.
28120.....	3	3	Partial excision (craterization, saucerization, sequestrectomy, or diaphysectomy) of bone (e.g., for osteomyelitis), talus or calcaneus.
28122.....	3	3	Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), tarsal or metatarsal bone, except talus or calcaneus.
28140.....	3	3	Metatarsectomy.
28171.....	3	3	Radical resection for tumor; tarsal (except talus or calcaneus).
28173.....	3	3	Radical resection for tumor; metatarsal.
28175.....	3	3	Radical resection for tumor; phalanx.
Introduction and/or removal			
28193.....	2	4	Remove foreign body; complicated.
Repair revision or Reconstruction			
*28200.....	3	3	Repair or suture of tendon, foot, flexor, single; primary or secondary, without free graft, each tendon.
*28202.....	4	3	Repair or suture of tendon, foot, flexor, single; secondary with free graft, each tendon (includes obtaining graft).
*28208.....	3	3	Repair or suture of tendon, foot, extensor, single; primary or secondary, each tendon.
*28210.....	4	3	Repair or suture of tendon, foot, extensor, single; secondary with free graft, each tendon, (including obtaining graft).
*28222.....	3	1	Tenolysis, flexor; multiple (through same incision).
*28225.....	3	1	Tenolysis, extensor; single.
*28226.....	3	1	Tenolysis, extensor; multiple (through same incision).
*28230.....	1	1	Tenotomy, open, flexor; foot, single or multiple (separate procedure).
*28232.....	1	4	Tenotomy, open, flexor; toe, single (separate procedure).
*28234.....	1	3	Tenotomy, open, extensor, foot or toe.

Payment groups			
Old	New		
*28240	1	3	Tenotomy or release, abductor hallucis muscle.
28250	2	3	Division of plantar fascia and muscle ("Steindler stripping") (separate procedure).
28260	3	3	Capsulotomy, midfoot; medial release only (separate procedure).
28261	3	3	Capsulotomy, midfoot; with tendon lengthening.
*28264	3	1	Capsulotomy, midtarsal (Heyman type procedure).
*28270	3	2	Capsulotomy for contracture; metatarsophalangeal joint, with or without tenorrhaphy, single, each joint (separate procedure).
*28272	3	3	Capsulotomy for contracture; interphalangeal joint, single, each joint (separate procedure).
*28285	4	3	Hammertoe operation; one toe (e.g., interphalangeal fusion, filleting, phalangectomy) (separate procedure).
*28286	4	4	Hammertoe operation; for cock-up fifth toe with plastic skin closure, (Ruiz-Mora type procedure).
*28290	4	4	Hallux valgus (bunion) correction, with or without sesamoidectomy; simple exostectomy (Silver type procedure).
*28292	4	4	Hallux valgus (bunion) correction, with or without sesamoidectomy; Keller, McBride or Mayo type procedure.
*28293	4	5	Hallux valgus (bunion) correction, with or without sesamoidectomy; resection of joint with implant.
*28294	4	6	Hallux valgus (bunion) correction, with or without sesamoidectomy; with tendon transplants (Joplin type procedure).
*28296	4	5	Hallux valgus (bunion) correction, with or without sesamoidectomy; with metatarsal osteotomy (e.g., Mitchell, Chevron, or concentric type procedures).
28297	4	3	Hallux valgus (bunion) correction, with or without sesamoidectomy; Lapidus type procedure.
*28298	4	3	Hallux valgus (bunion) correction, with or without sesamoidectomy; by phalanx osteotomy.
*28299	4	5	Hallux valgus (bunion) correction, with or without sesamoidectomy; by other methods (e.g., double osteotomy).
*28306	4	4	Osteotomy, metatarsal, base or shaft, single, for shortening or angular correction; first metatarsal.
*28308	4	2	Osteotomy, metatarsal, base or shaft, single, for shortening or angular correction; other than first metatarsal.
*28310	4	3	Osteotomy for shortening, angular or rotational correction; proximal phalanx, first toe (separate procedure).
*28312	4	3	Osteotomy for shortening, angular or rotational correction; other phalanges, any toe.
28315	3	4	Sesamoidectomy, first toe (separate procedure).
28320	4	4	Repair of nonunion or malunion; tarsal bones (calcaneus, talus, etc).
28322	4	4	Repair of nonunion or malunion; metatarsal, with or without bone graft (includes obtaining graft).
Fracture and/or dislocation			
28405	1	2	Treatment of closed calcaneal fracture; with manipulation including Cotton or Bohler type reductions.
28406	2	2	Treatment of closed calcaneal fracture; with manipulation and skeletal fixation.
28420	4	4	Open treatment of closed or open calcaneal fracture, with or without internal or external skeletal fixation; with primary iliac or other autogenous bone graft (includes obtaining graft).
28435	1	2	Treatment of closed talus fracture; with manipulation.
28436	2	2	Treatment of closed talus fracture; with manipulation and percutaneous pinning.
28465	4	3	Open treatment of closed or open tarsal bone fracture (except talus and calcaneus), with or without internal or external skeletal fixation, each.
28485	4	4	Open treatment of closed or open metatarsal fracture, with or without internal or external skeletal fixation, each.
28500	3	3	Treatment of open fracture great toe, phalanx or phalanges, with uncomplicated soft tissue closure.
28505	3	3	Open treatment of closed or open fracture great toe, phalanx or phalanges, with or without internal or external skeletal fixation.
28520	2	3	Treatment of open fracture, phalanx or phalanges, other than great toe, with uncomplicated soft tissue closure, each.
28525	3	3	Open treatment of closed or open fracture, phalanx or phalanges, other than great toe, with or without internal or external skeletal fixation, each.
28545	1	1	Treatment of closed tarsal bone dislocation; requiring anesthesia.
28546	2	2	Treatment of closed tarsal bone dislocation, with percutaneous skeletal fixation.
28555	4	2	Open treatment of closed or open tarsal bone dislocation, with or without internal or external skeletal fixation.
28575	1	1	Treatment of closed talotarsal joint dislocation; requiring anesthesia.
28585	4	3	Open treatment of closed or open talotarsal joint dislocation, with or without internal or external skeletal fixation.
28605	1	1	Treatment of closed tarsometatarsal joint dislocation; requiring anesthesia.
28606	2	2	Treatment of closed tarsometatarsal joint dislocation, with percutaneous skeletal fixation.
28615	4	3	Open treatment of closed or open tarsometatarsal joint dislocation, with or without internal or external skeletal fixation.
28645	4	3	Open treatment of closed or open metatarsophalangeal joint dislocation.
28670	3	3	Treatment of open interphalangeal joint dislocation, with uncomplicated soft tissue closure.
28675	4	3	Open treatment of closed or open interphalangeal joint dislocation.
Arthrodesis			
*28750	4	4	Arthrodesis, great toe; metatarsophalangeal joint.
*28755	4	4	Arthrodesis, great toe; interphalangeal joint.
*28760	4	4	Arthrodesis, great toe, interphalangeal joint, with extensor hallucis longus transfer to first metatarsal neck (Jones type procedure).
Amputation			
*28810	2	2	Amputation, metatarsal, with toe, single.
*28820	2	2	Amputation, toe; metatarsophalangeal joint.
*28825	2	2	Amputation, toe; interphalangeal joint.
Arthroscopy			
29870	4	2	Arthroscopy, knee, diagnostic, with or without synovial biopsy (separate procedure).
29874	4	3	Arthroscopy, knee, surgical; for removal of loose body or foreign body (e.g., osteochondritis dissecans fragmentation, chondral fragmentation).
29875	4	3	Arthroscopy, knee, surgical; synovectomy, limited (e.g., plica or shelf resection).
29876	4	3	Synovectomy, major, two or more compartments (e.g., medial or lateral).
29877	4	3	Debridement/shaving of articular cartilage (chondroplasty).
29881	4	3	Arthroscopy, knee, surgical; with meniscectomy (medial or lateral including any meniscal shaving).
29887	4	3	Drilling for intact osteochondritis dissecans lesion with internal fixation.
Respiratory system			
Nose			
Excision			
*30115	2	2	Excision, nasal polyp(s), extensive; unilateral.
30116	2	2	Excision, nasal polyp(s), extensive; bilateral.
30117	2	3	Excision, intranasal lesion; internal approach.
30118	2	2	Excision, intranasal lesion; external approach (lateral rhinotomy).

Payment groups		
Old	New	
30125.....	3	2 Excision dermoid cyst, nose; complex, under bone or cartilage.
*30130.....	1	3 Excision turbinate, partial or complete.
*30140.....	4	3 Submucous resection turbinate, partial or complete.
30150.....	4	3 Rhinectomy; partial.
30160.....	4	4 Rhinectomy; total.
Removal foreign body		
30310.....	1	1 Removal of foreign body, intranasal; requiring general anesthesia.
30320.....	2	2 Removal foreign body; by lateral rhinotomy.
Repair		
30400.....	4	4 Rhinoplasty, primary; lateral and alar cartilages and/or elevation of nasal tip.
30410.....	4	4 Rhinoplasty, primary; complete, external parts including bony pyramid, lateral and alar cartilages, and/or elevation of nasal tip.
30420.....	4	5 Rhinoplasty, primary; including major septal repair.
30430.....	4	3 Rhinoplasty, secondary; minor revision (small amount of nasal tip work).
30435.....	4	5 Rhinoplasty, secondary; intermediate revision (bony work with osteotomies).
30450.....	4	6 Rhinoplasty, secondary; major revision (nasal tip work and osteotomies).
30520.....	4	4 Septoplasty or submucous resection, with or without cartilage scoring, contouring or replacement with graft.
30580.....	4	4 Repair fistula; oromaxillary (combine with 31030 if antrotomy is included).
30600.....	4	4 Repair fistula; oronasal.
*30620.....	4	6 Reconstruction, functional, internal nose (septal or other intranasal dermatoplasty) (does not include obtaining graft).
*30630.....	4	6 Repair nasal septal perforations.
Other procedures		
30915.....	4	1 Ligation arteries; ethmoidal.
30920.....	4	2 Ligation arteries; internal maxillary artery, transantral.
		Accessory sinuses
Incision		
*31020.....	2	3 Sinusotomy, maxillary (antrotomy); intranasal, unilateral.
*31021.....	2	3 Sinusotomy, maxillary (antrotomy); intranasal, bilateral.
*31030.....	2	3 Sinusotomy, maxillary (antrotomy); radical, unilateral (Caldwell-Luc) without removal of antrochoanal polyps.
*31031.....	2	3 Sinusotomy, maxillary (antrotomy); radical, bilateral (Caldwell-Luc) without removal of antrochoanal polyps.
31032.....	4	4 Sinusotomy, maxillary (antrotomy); radical unilateral (Caldwell-Luc) with removal antrochoanal polyps.
31033.....	4	4 Sinusotomy, maxillary (antrotomy); radical, bilateral (Caldwell-Luc) with removal antrochoanal polyps.
31070.....	2	2 Sinusotomy frontal; external, simple (trephine operation).
Excision		
*31200.....	3	2 Ethmoidectomy; intranasal, anterior.
*31201.....	3	5 Ethmoidectomy; intranasal, total.
*31205.....	3	3 Ethmoidectomy; extranasal, total.
		Larynx
Endoscopy		
*31505.....	1	2 Laryngoscopy, indirect (separate procedure); diagnostic.
*31510.....	1	2 Laryngoscopy, indirect (separate procedure); with biopsy.
*31511.....	1	2 Laryngoscopy, indirect (separate procedure); with removal of foreign body.
*31512.....	1	2 Laryngoscopy, indirect (separate procedure); with removal of lesion.
31513.....	2	2 Laryngoscopy, indirect (separate procedure); with vocal cord injection.
*31515.....	1	1 Laryngoscopy direct; for aspiration.
*31525.....	1	1 Laryngoscopy, direct; diagnostic, except newborn.
*31526.....	1	2 Laryngoscopy, indirect; diagnostic, with operating microscope.
31527.....	2	1 Laryngoscopy, direct; with insertion of obturator.
*31530.....	1	2 Laryngoscopy, direct, operative, with foreign body removal.
*31531.....	1	3 Laryngoscopy, direct, operative, with foreign body removal; with operating microscope.
*31535.....	1	2 Laryngoscopy, direct, operative, with biopsy.
*31536.....	1	3 Laryngoscopy, direct, operative, with biopsy; with operating microscope.
*31540.....	1	3 Laryngoscopy, direct, operative, with excision of tumor and/or stripping of vocal cords or epiglottis.
*31541.....	1	4 Laryngoscopy, direct, operative, with excision of tumor and/or stripping of vocal cords or epiglottis; with operating microscope.
*31560.....	1	1 Laryngoscopy, direct, operative, with arytenoidectomy.
*31561.....	1	2 Laryngoscopy, direct, operative, with arytenoidectomy; with operating microscope.
*31570.....	1	2 Laryngoscopy, direct, with injection into vocal cord(s), therapeutic.
*31571.....	1	2 Laryngoscopy, direct, with injection into vocal cord(s), therapeutic; with operating microscope.
31576.....	1	2 Laryngoscopy, flexible fiberoptic; with biopsy.
31577.....	1	2 Laryngoscopy, flexible fiberoptic; with removal of foreign body.
31578.....	1	2 Laryngoscopy, flexible fiberoptic; with removal of lesion.
		Trachea and bronchi
Incision		
31600.....	2	2 Tracheostomy, planned (separate procedure).
31612.....	1	1 Tracheal puncture, percutaneous for aspiration of mucus (transtracheal aspiration).
31613.....	2	2 Tracheostoma revision; simple, without flap rotation.
31614.....	2	2 Tracheostoma revision; complex, with flap rotation.
Endoscopy		
31615.....	1	1 Tracheobronchoscopy through established tracheostomy incision.
31622.....	1	1 Bronchoscopy; diagnostic, (flexible original), with or without cell washing or brushing.
*31625.....	1	2 Bronchoscopy; with biopsy.
31628.....	1	2 Bronchoscopy; with transbronchial lung biopsy, with or without fluoroscopic guidance.
*31630.....	1	2 Bronchoscopy; with tracheal or bronchial dilation or closed reduction of fracture.
31631.....	1	2 Bronchoscopy; with tracheal dilation and placement of tracheal stent.
*31635.....	1	2 Bronchoscopy; with removal of foreign body.

Payment groups		
Old	New	
*31640	1	2 Bronchoscopy; with excision of tumor.
31641	1	2 Bronchoscopy; with destruction of tumor or relief of stenosis by any method other than excision (e.g., laser).
*31645	1	1 Bronchoscopy; with therapeutic aspiration of tracheobronchial tree, initial (e.g., drainage of lung abscess).
31646	1	1 Bronchoscopy; with therapeutic aspiration of tracheobronchial tree, subsequent.
31656	1	1 Bronchoscopy; with injection of contrast material for segmental bronchography (fiberscope only).
31659	1	1 Bronchoscopy; with other bronchoscopic procedures.
Introduction		
31700	1	1 Catheterization, transglottic (separate procedure).
31708	1	1 Instillation of contrast material for laryngography or bronchography, without catheterization.
31710	1	1 Catheterization for bronchography, with or without instillation of contrast material.
31715	1	1 Transtracheal injection for bronchography.
31717	1	1 Catheterization with bronchial brush biopsy.
31719	1	1 Transtracheal (percutaneous) introduction of indwelling tube for therapy (tick tube).
31720	1	1 Catheter aspiration (separate procedure); nasotracheobronchial.
Cardiovascular system		
Repair, ligation and other procedures		
37609	1	2 Ligation or biopsy, temporal artery.
*37700	4	2 Ligation and division of long saphenous vein at saphenofemoral junction, or distal interruptions, unilateral.
*37701	4	3 Ligation and division of long saphenous vein at saphenofemoral junction, or distal interruptions, unilateral; bilateral.
*37720	4	3 Ligation and division and complete stripping of long or short saphenous veins; unilateral.
*37721	4	3 Ligation and division and complete stripping of long or short saphenous veins; bilateral.
*37730	4	3 Ligation and division and complete stripping of long and short saphenous veins; unilateral.
*37731	4	3 Ligation and division and complete stripping of long and short saphenous veins; bilateral.
37735	4	3 Ligation and division and complete stripping of long or short saphenous veins with radical excision of ulcer and skin graft and/or interruption of communicating veins of lower leg, with excision of deep fascia; unilateral.
37737	4	3 Ligation and division and complete stripping of long or short saphenous veins with radical excision of ulcer and skin graft and/or interruption of communicating veins of lower leg, with excision of deep fascia; bilateral.
37760	4	3 Ligation and perforators, subfascial, radical (Linton Type), with or without skin graft.
*37780	4	3 Ligation and division of short saphenous vein at saphenopopliteal junction (separate procedure); unilateral.
*37781	4	3 Bilateral. Ligation and division of short saphenous vein at saphenopopliteal junction (separate procedure).
37785	3	3 Ligation, division and/or excision of secondary varicose veins (clusters) of leg; unilateral.
37787	3	3 Ligation, division and/or excision of secondary varicose veins (clusters) of leg; bilateral.
Hemic and lymphatic system		
Lymph nodes and lymphatic channels		
Incision		
38305	1	2 Drainage of lymph node abscess or lymphadenitis; extensive.
38308	1	2 Lymphagiotomy or other operations on lymphatic channels.
Excision		
*38500	2	2 Biopsy or excision of lymph node(s); superficial (separate procedure).
*38510	2	2 Biopsy or excision of lymph node(s); deep, cervical node(s).
*38520	2	2 Biopsy or excision of lymph node(s); deep cervical node(s) with excision scalene fat pad.
38530	3	2 Biopsy or excision of lymph node(s); internal mammary node(s) (separate procedure).
38542	3	2 Dissection; deep jugular node(s).
38550	3	3 Excision of cystic hygroma, axillary or cervical, without deep neurovascular dissection; simple.
38555	4	3 Excision of cystic hygroma, axillary or cervical, without deep neurovascular dissection; complex.
Radical lymphadenectomy (radical resection of lymph nodes)		
38700	4	2 Suprahyoid lymphadenectomy; unilateral.
38701	4	3 Suprahyoid lymphadenectomy; bilateral.
38740	3	2 Axillary lymphadenectomy; superficial.
38745	3	4 Axillary lymphadenectomy; complete.
38760	3	2 Inguinofemoral lymphadenectomy, superficial, including Cloquet's node (separate procedure); unilateral.
38761	3	3 Inguinofemoral lymphadenectomy, superficial, including Cloquet's node (separate procedure); bilateral.
Introduction		
38790	1	1 Injection procedure for lymphangiography; unilateral.
38791	1	1 Injection procedure for lymphangiography; bilateral.
Digestive system		
Lips		
Excision		
*40500	2	2 Vermilionectomy (lip shave), with mucosal advancement.
*40510	3	2 Excision of lip; transverse wedge excision with primary closure.
*40520	3	2 Excision lip; V-excision with primary direct linear closure.
40525	3	2 Excision lip; full thickness, reconstruction with local flap (Estlander or fan).
40527	3	2 Excision lip; full thickness, reconstruction with cross lip flap (Abbe-Estlander).
40530	3	2 Resection of lip, more than one-fourth, without reconstruction.
Repair (cheiloplasty)		
40650	3	3 Repair lip, full thickness; vermilion only.
40654	4	3 Repair lip, full thickness; over one half vertical height, or complex.
Vestibule of mouth		
Incision		
40801	1	2 Drainage of abscess, cyst, hematoma, vestibule of mouth; complicated.
40805	1	2 Removal of embedded foreign body; complicated.
Excision, destructive		
40814	2	2 Excision of lesion of mucosa and submucosa, with complex repair.
40816	2	2 Excision of lesion of mucosa and submucosa; complex with excision of underlying muscle.

Payment groups		
Old	New	
40818.....	2	1 Excision of mucosa as donor graft.
Repair		
40831.....	2	1 Closure of laceration; over 2.6 cm or complex.
40840.....	2	2 Vestibuloplasty; anterior.
40842.....	2	3 Vestibuloplasty; posterior, unilateral.
40843.....	2	3 Vestibuloplasty; posterior, bilateral.
40844.....	3	5 Vestibuloplasty; entire arch.
40845.....	4	5 Vestibuloplasty; complex.
		Tongue, floor of mouth
Incision		
*41000.....	1	1 Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; lingual.
*41005.....	1	1 Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; sublingual, superficial.
Excision		
*41100.....	1	2 Biopsy of tongue; anterior two-thirds.
*41105.....	1	2 Biopsy of tongue; posterior one-third.
41114.....	2	2 Excision of lesion of tongue with closure; with local tongue flap.
41115.....	1	1 Excision of lingual frenum (frenectomy)
41116.....	1	1 Excision lesion of floor of mouth.
41120.....	3	5 Glossectomy; less than one-half tongue.
Repair		
41251.....	3	2 Repair laceration up to 2 cm; posterior one-third of tongue.
		Dentoalveolar structures
Incision		
41806.....	2	1 Removal embedded foreign body; from bone.
Excision, destruction		
41826.....	2	2 Excision of lesion or tumor (except listed above); with simple repair.
41827.....	3	2 Excision of lesion or tumor (except listed above); with complex repair.
		Palate, uvula
Incision		
*42000.....	1	2 Drainage of abscess of palate, uvula.
Excision, destruction		
42104.....	1	2 Excision, lesion of palate, uvula; without closure.
42106.....	1	2 Excision, lesion of palate, uvula; with simple primary closure.
42107.....	1	2 Excision, lesion of palate, uvula; with local flap closure.
42120.....	2	4 Resection of palate or extensive resection of lesion.
42140.....	2	2 Uvulectomy, excision of uvula.
Repair		
42182.....	1	2 Repair laceration of palate; over 2 cm or complex.
		Salivary gland and ducts
Incision		
42305.....	1	2 Drainage of abscess; parotid, complicated.
42320.....	1	1 Drainage of abscess; submaxillary external.
42325.....	2	2 Fistulization of sublingual salivary cyst (ranula).
42335.....	2	2 Sialolithotomy; submandibular (submaxillary), complicated, intraoral.
42340.....	2	2 Sialolithotomy; parotid, extraoral or complicated intraoral.
Excision		
42408.....	2	3 Excision of sublingual salivary cyst (ranula).
42410.....	4	3 Excision of parotid tumor or parotid gland; lateral lobe, without nerve dissection.
42440.....	4	2 Excision of submandibular (submaxillary) gland.
42450.....	4	2 Excision of sublingual gland.
Repair		
42500.....	3	3 Plastic repair of salivary duct, sialodochoplasty; primary or simple.
42505.....	4	4 Plastic repair salivary duct, sialodochoplasty; secondary or complicated.
42507.....	4	2 Parotid duct diversion, bilateral (Wilke type procedure).
42508.....	4	3 Parotid duct diversion, bilateral (Wilke type procedure); with excision of one submandibular gland.
42509.....	4	3 Parotid duct diversion, bilateral (Wilke type procedure); with excision of both submandibular glands.
Other procedures		
42600.....	1	1 Closure salivary fistula.
42665.....	1	1 Ligation salivary duct, intraoral.
		Pharynx, adenoids, and tonsils
Incision		
42720.....	1	1 Incision and drainage abscess; retropharyngeal or parapharyngeal, intraoral approach.
42725.....	1	2 Incision and drainage abscess; retropharyngeal or parapharyngeal, external approach.
Excision		
42806.....	2	2 Biopsy; nasopharynx, survey for unknown primary lesion.
42808.....	1	2 Excision of lesion of pharynx.
*42810.....	2	3 Excision branchial cleft cyst or vestige; confined to skin and subcutaneous tissues.
*42815.....	2	5 Excision branchial cleft cyst or vestige; extending beneath subcutaneous tissues.
42860.....	2	3 Excision of tonsil tags.
42870.....	2	3 Excision lingual tonsil (separate procedure).
42880.....	2	5 Excision nasopharyngeal lesion (e.g., fibroma).
Repair		

Payment groups			
	Old	New	
42900	2	1	Suture pharynx for wound or injury.
42950	4	2	Pharyngoplasty (plastic or reconstructive operation on pharynx).
Other procedures			
42955	2	2	Pharyngostomy (fistulization of pharynx, external for feeding).
Esophagus			
Endoscopy			
*43200	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); diagnostic procedure.
*43202	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for biopsy and/or collection of specimen by brushing or washing.
43204	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for injection sclerosis of esophageal varices.
*43215	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for removal of foreign body.
*43217	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for removal of polypoid lesion(s).
43219	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for insertion of plastic tube or stent.
43220	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for dilation, direct.
43226	1	1	Esophagoscopy, rigid or flexible fiberoptic (specify); for insertion of wire to guide dilation.
43227	1	2	Esophagoscopy, rigid or flexible fiberoptic (specify); for control of hemorrhage (e.g., electrocoagulation laser photocoagulation).
43228	1	2	Esophagoscopy, rigid or flexible fiberoptic (specify); for ablation of tumor or mucosal lesion.
43235	1	1	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; complex diagnostic.
43239	1	2	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for biopsy and/or collection of specimen by brushing or washing.
43247	1	2	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for removal of foreign body.
43251	1	2	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for removal of polypoid lesion(s).
43255	1	2	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).
43258	1	2	Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for ablation of tumor or mucosal lesion (e.g., electrocoagulation, with laser photocoagulation).
43260	2	2	Endoscopic retrograde cholangiopancreatography (ERCP), with or without specimen collection.
43262	2	2	Endoscopic retrograde cholangiopancreatography (ERCP) with or without specimen collection; for sphincterotomy/papillotomy.
43263	2	2	Endoscopic retrograde cholangiopancreatography (ERCP), with or without specimen collection; for pressure measurement of sphincter of Oddi.
43264	2	2	Endoscopic retrograde cholangiopancreatography (ERCP), with or without specimen collection; for removal of stone(s) from biliary and/or pancreatic ducts.
Manipulation			
43450	1	1	Dilation of esophagus, by unguided sound or bougie single or multiple passes; initial session.
43451	1	1	Dilation of esophagus, by unguided sound or bougie single or multiple passes; subsequent session.
43453	1	1	Dilation of esophagus, over guide wire or string.
43455	1	2	Dilation of esophagus, by balloon or Stark dilator.
43456	1	2	Dilation of esophagus, by balloon or Stark dilator; retrograde.
Intestines (except rectum)			
Enterostomy—external fistulization of intestines (separate procedure)			
*44340	3	3	Revision of colostomy; simple (release of superficial scar).
44345	4	4	Revision of colostomy; complicated reconstruction in depth.
44346	4	4	Revision of colostomy; with repair of paracolostomy hernia.
Endoscopy, small bowel and stomal			
44360	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; diagnostic.
44361	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for biopsy and/or collection of specimen by brushing or washing.
44363	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for removal of foreign body.
44364	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for removal of polypoid lesion(s).
44366	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).
44369	1	2	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for ablation of tumor or mucosal lesion (e.g., laser).
44380	1	1	Fiberoptic ileoscopy through stoma.
44382	1	1	Fiberoptic ileoscopy through stoma; with biopsy and/or collection of specimen by brushing or washing.
44388	1	1	Fiberoptic colonoscopy through colostomy.
44389	1	1	Fiberoptic colonoscopy through colostomy; for biopsy and/or collection of specimen by brushing or washing.
44390	1	1	Fiberoptic colonoscopy through colostomy; for removal of foreign body.
44391	1	1	Fiberoptic colonoscopy through colostomy; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).
44392	1	1	Fiberoptic colonoscopy through colostomy; for removal of polypoid lesion(s).
Rectum			
Incision			
45000	3	1	Transrectal drainage of pelvic abscess.
45005	1	2	Incision and drainage of submucosal abscess, rectum.
45020	2	2	Incision and drainage of deep supraleator, pelvirectal, or retrorectal abscess.
Excision			
45170	3	2	Excision of rectal tumor, simple, transanal approach.
45180	3	3	Excision and/or electrodesiccation of malignant tumor of rectum, transanal approach; palliative.
45181	3	3	Excision and/or electrodesiccation of malignant tumor of rectum, transanal approach; therapeutic.
Endoscopy			
45355	1	1	Colonoscopy, with standard sigmoidoscope, transabdominal via colotomy, single or multiple.
45360	1	1	Colonoscopy, fiberoptic, beyond 25 cm to splenic flexure; diagnostic procedure.

Payment groups

Old New

45365	1	1	Colonoscopy, fiberoptic, beyond 25 cm to splenic flexure; for biopsy and/or collection of specimen by brushing or washing.
45367	1	1	Colonoscopy, fiberoptic, beyond 25 cm to splenic flexure; for removal of foreign body.
45368	1	1	Colonoscopy, fiberoptic, beyond 25 cm to splenic flexure; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).
45370	1	1	Colonoscopy, fiberoptic, beyond 25 cm to splenic flexure; for removal of polypoid lesion(s).
45378	1	2	Colonoscopy, fiberoptic, beyond splenic flexure; diagnostic procedure.
45379	1	2	Colonoscopy, fiberoptic, beyond splenic flexure; for removal of foreign body.
45380	1	2	Colonoscopy, fiberoptic, beyond splenic flexure; for biopsy and/or collection of specimen by brushing or washing.
45382	1	2	Colonoscopy, fiberoptic, beyond splenic flexure; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation).
45385	1	2	Colonoscopy, fiberoptic, beyond splenic flexure; for removal of polypoid lesion(s).
Repair			
45500	4	2	Proctoplasty; for stenosis.
45505	4	2	Proctoplasty; for prolapse of mucous membrane.
45521	1	1	Perirectal injection of sclerosing solution for prolapse; hospital.
45560	4	2	Repair of rectocele (separate procedure).
Manipulation			
45900	1	1	Reduction of procidentia (separate procedure) under anesthesia.
*45910	1	1	Dilation of rectal structure (separate procedure) under anesthesia other than local.
45915	1	1	Removal of fecal impaction or foreign body (separate procedure) under anesthesia.
			Anus
Incision			
46000	2	3	Fistulotomy, subcutaneous.
46040	2	3	Incision and drainage of ischiorectal and/or perirectal abscess (separate procedure).
46045	2	2	Incision and drainage of intramural, intramuscular or submucosal abscess, transanal, under anesthesia.
*46060	2	2	Incision and drainage of ischiorectal or intramural abscess, with fistulectomy, submuscular.
46080	2	3	Sphincterotomy, anal, division of sphincter (separate procedure).
Excision			
46200	2	2	Fissurectomy, with or without sphincterotomy.
46211	2	2	Cryptectomy; multiple (separate procedure).
*46250	3	3	Hemorrhoidectomy, external, complete.
*46255	3	3	Hemorrhoidectomy internal and external, simple.
*46257	3	3	Hemorrhoidectomy internal and external, simple; with fissurectomy.
*46258	3	3	Hemorrhoidectomy internal and external simple; with fistulectomy, with or without fissurectomy.
46260	2	3	Hemorrhoidectomy, internal and external, complex or extensive.
46261	2	4	Hemorrhoidectomy, internal and external, complex or extensive; with fissurectomy.
*46262	2	4	Hemorrhoidectomy, internal and external, complex or extensive; with fistulectomy, with or without fissurectomy.
*46270	2	3	Fistulectomy; subcutaneous.
*46275	2	3	Fistulectomy; submuscular.
*46280	2	4	Fistulectomy; complex or multiple.
46285	2	1	Fistulectomy; second stage.
			Anus
Introduction			
46750	4	3	Sphincteroplasty, anal, for incontinence or prolapse; adult.
46753	4	3	Graft (Thiersch operation) for rectal incontinence and/or prolapse.
46754	4	2	Removal of Thiersch wire or suture.
46760	4	2	Sphincteroplasty, anal, for incontinence, adult, muscle transplant.
Destruction			
46924	1	1	Destruction of lesion(s), anus (eg, condyloma, papilloma, molluscum contagiosum, herpetic vesicle), extensive, any method.
46937	2	2	Cryosurgery of rectal tumor; benign.
46938	2	2	Cryosurgery of rectal tumor; malignant.
			Liver
Incision			
*47000	2	1	Biopsy of liver, percutaneous needle.
			Abdomen, peritoneum, and omentum
Incision			
49000	4	4	Exploratory laparotomy, exploratory celiotomy (separate procedure).
Endoscopy			
*49300	4	2	Peritoneoscopy; without biopsy.
*49301	4	3	Peritoneoscopy; with biopsy.
49302	4	3	Peritoneoscopy with guided transhepatic cholangiography; without biopsy.
49303	4	3	Peritoneoscopy with guided transhepatic cholangiography; with biopsy.
Introduction			
49400	1	1	Pneumoperitoneum; initial.
49401	1	1	Pneumoperitoneum; subsequent.
49420	1	1	Insertion of intraperitoneal cannula or catheter for drainage or dialysis; temporary.
49421	1	1	Insertion of intraperitoneal cannula or catheter for drainage or dialysis; permanent.
49425	1	2	Peritoneal-venous shunt (e.g., Le Vein shunt).
49426	1	2	Revision of peritoneal-venous shunt.
			Hernioplasty, Herniorrhaphy, Herniotomy
Repair			
*49505	4	4	Repair inguinal hernia, age 5 or over.
*49510	4	4	Repair inguinal hernia, age 5 or over with orchiectomy, with or without implantation of prosthesis.

Payment groups			
	Old	New	
*49515	4	5	Repair inguinal hernia, age 5 or over; with excision of hydrocele or spermatocele.
*49520	4	6	Repair inguinal hernia, any age; recurrent.
*49525	4	4	Repair inguinal hernia, any age; sliding.
49540	4	2	Repair lumbar hernia.
*49550	4	4	Repair femoral hernia, groin incision.
49552	4	4	Repair femoral hernia, Henry approach.
*49555	4	5	Repair femoral hernia, recurrent, any approach.
*49560	4	4	Repair ventral (incisional) hernia (separate procedure).
*49565	4	4	Repair ventral (incisional) hernia (separate procedure); recurrent.
49570	4	4	Repair epigastric hernia, properitoneal fat (separate procedure); simple.
49575	4	4	Repair epigastric hernia, properitoneal fat (separate procedure); complex.
49581	4	4	Repair umbilical hernia; age 5 or over.
49590	4	3	Repair spigelian hernia.
Urinary system			
Kidney			
Incision			
50020	3	2	Drainage of perirenal or renal abscess (separate procedure).
50040	4	3	Nephrostomy, nephrotomy with drainage.
Excision			
50200	1	1	Renal biopsy, percutaneous by trocar or needle.
50205	4	3	Renal biopsy, percutaneous; by surgical exposure of kidney.
Introduction			
50390	1	1	Aspiration and/or injection of renal cyst or pelvis by needle, percutaneous.
50392	1	1	Introduction of intracatheter or catheter into renal pelvis for drainage and/or injection, percutaneous.
50393	1	1	Introduction of ureteral catheter or stent into ureter through renal pelvis for drainage and/or injection, percutaneous.
50394	1	1	Injection procedure for pyelography (as nephrostogram, pyelostogram, antegrade pyeloureterograms) through nephrostomy or pyelostomy tube, or indwelling ureteral catheter (separate procedure).
50396	1	1	Manometric studies through nephrostomy or pyelostomy tube, or indwelling ureteral catheter.
50398	1	1	Change of nephrostomy or pyelostomy tube.
Endoscopy			
50553	1	1	Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization.
50559	1	1	Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance with or without biopsy and/or fulguration.
50561	1	1	Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus.
50570	1	1	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service.
50572	1	1	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization.
50576	1	1	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with fulguration with or without biopsy.
50578	1	1	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance, with or without biopsy and/or fulguration (not including provision of material).
50580	1	1	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus.
Ureter			
Introduction			
50684	1	1	Injection procedure for ureterography or ureteropyelography through ureterostomy or indwelling ureteral catheter (separate procedure).
50690	1	1	Injection procedure for visualization of ilial conduit and/or ureteropyelography, exclusive of radiologic service (separate procedure).
Endoscopy			
50953	1	1	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization.
50955	1	1	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with biopsy.
50957	1	1	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with fulguration, with or without biopsy.
50959	1	1	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance with or without biopsy and/or fulguration (not including provision of material).
50961	1	1	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus.
50970	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service.
50972	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization.
50974	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with biopsy.
50976	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with fulguration, with or without biopsy.
50978	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance, with or without biopsy and/or fulguration (not including provision of material).
50980	1	1	Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus.

Payment groups		
Old	New	
Bladder		
Incision		
51005.....	1	1 Aspiration of bladder; by trocar or intracatheter.
51010.....	1	1 Aspiration of bladder; with insertion of suprapubic catheter.
Introduction		
51600.....	1	1 Injection procedure for cystography or voiding urethrocytography.
51605.....	1	1 Injection procedure and placement of chain for contrast and/or chain urethrocytography.
51610.....	1	1 Injection procedure for retrograde urethrocytography.
51710.....	1	1 Change of cystostomy tube; complicated.
Bladder		
Repair		
51865.....	4	4 Cystorrhaphy, suture of bladder wound, injury or rupture; complicated.
51900.....	4	4 Closure of vesicovaginal fistula, abdominal approach.
Ureter		
Endocopy-cystoscopy, urethroscopy cystourethroscopy notes		
*52000.....	1	2 Cystourethroscopy (separate procedure).
52005.....	1	2 Cystourethroscopy; with ureteral catheterization, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service.
52007.....	1	2 Cystourethroscopy; with ureteral catheterization and brush biopsy of ureter and/or renal pelvis.
52010.....	1	2 Cystourethroscopy; with ejaculatory duct catheterization, with or without irrigation, instillation, or duct radiography, exclusive of radiologic service.
Bladder		
Transurethral surgery (urethra, and bladder)		
52204.....	3	2 Cystourethroscopy, with biopsy.
52214.....	3	2 Cystourethroscopy, with fulguration (including cryosurgery or laser surgery) of trigone, bladder neck, prostatic fossa, urethra, or periurethral glands.
52224.....	3	2 Cystourethroscopy, with fulguration (including cryosurgery or laser surgery) or treatment of MINOR (less than 0.5 cm) lesion(s), with or without biopsy.
52234.....	3	2 Cystourethroscopy, with fulguration (including cryosurgery or laser surgery) and/or resection of; SMALL bladder tumor(s) (0.5 to 2.0 cm).
52235.....	3	3 Cystourethroscopy, with fulguration (including cryosurgery) and/or resection of; MEDIUM bladder tumor(s) (2.0 to 5.0 cm).
52240.....	3	3 Cystourethroscopy, with fulguration (including cryosurgery) and/or resection of; LARGE bladder tumor(s).
52250.....	3	4 Cystourethroscopy with insertion of radioactive substance, with or without biopsy or fulguration.
52260.....	3	2 Cystourethroscopy, with dilation of bladder for interstitial cystitis; general or conduction (spinal) anesthesia.
52270.....	3	2 Cystourethroscopy with internal urethrotomy; female.
52275.....	3	2 Cystourethroscopy with internal urethrotomy; male.
52276.....	3	2 Cystourethroscopy with direct vision internal urethrotomy.
52277.....	3	2 Cystourethroscopy, with resection of external sphincter (sphincterotomy).
52281.....	3	2 Cystourethroscopy, with calibration and/or dilation of urethral stricture or stenosis, with or without meatotomy and injection procedure for cystography, male or female.
52283.....	3	2 Cystourethroscopy, with steroid injection into stricture.
52285.....	3	2 Cystourethroscopy for treatment of the female urethral syndrome with any or all of the following: urethral meatotomy, urethral dilation, internal urethrotomy, lysis of urethrovaginal septal fibrosis, lateral incisions of the bladder neck, and fulguration of polyp(s) of urethra, bladder neck, and/or trigone.
52290.....	3	2 Cystourethroscopy; with ureteral meatotomy, unilateral or bilateral.
52300.....	3	2 Cystourethroscopy; with resection or fulguration of ureterocele(s), unilateral or bilateral.
52305.....	3	2 Cystourethroscopy; with incision or resection of orifice of bladder diverticulum, single or multiple.
52310.....	4	2 Cystourethroscopy, with removal of foreign body calculus or ureteral stent from urethra or bladder; simple.
52315.....	4	2 Cystourethroscopy, with removal of foreign body calculus or ureteral stent from urethra or bladder; complicated.
52317.....	4	1 Litholapaxy: crushing of fragmentation or calculus by any means in bladder and removal of fragments, simple; small (less than 2.5 c.m.).
52318.....	4	2 Litholapaxy: crushing of fragmentation of calculus by any means in bladder and removal of fragments, simple; complicated or large (over 2.5 c.m.).
52320.....	4	5 Cystourethroscopy (including ureteral catheterization); with removal of ureteral calculus.
52330.....	4	2 Cystourethroscopy (including ureteral catheterization); with manipulation, without removal of ureteral calculus.
52332.....	4	2 Cystourethroscopy, with insertion of indwelling ureteral stent (e.g., Gibbons of double-J type).
52335.....	3	2 Cystourethroscopy, with ureteroscopy and/or pyeloscopy (includes dilation of the ureter by any method).
Transurethral Surgery (vesical neck and prostate)		
52340.....	3	3 Cystourethroscopy with incision, fulguration, or resection of bladder neck and/or posterior urethra (congenital valves, obstructive hypertrophic mucosal folds).
52500.....	3	3 Transurethral resection of bladder neck (separate procedure).
Transurethral surgery (urethra and bladder)		
52601.....	4	3 Transurethral resection of prostate, including control of postoperative bleeding, complete (vasectomy, meatotomy, cystourethroscopy, urethral calibration and/or dilation, and internal urethrotomy are included).
52606.....	4	1 Transurethral fulguration for postoperative bleeding occurring after the usual follow-up time.
52612.....	4	2 Transurethral resection of prostate; first stage of two-stage resection (partial resection).
52614.....	4	1 Transurethral resection of prostate; second stage of two-stage resection (resection completed).
52620.....	4	1 Transurethral resection; of residual obstructive tissue after 90 days postoperative.
52630.....	4	2 Transurethral resection; of regrowth of obstructive tissue longer than one year postoperative.
52640.....	4	2 Transurethral resection; of postoperative bladder neck contracture.
52650.....	4	2 Transurethral cryosurgical removal of prostate (postoperative irrigations and aspiration of sloughing tissue included).
52700.....	4	2 Transurethral drainage of prostatic abscess.
Urethra		
Incision		
53000.....	2	1 Urethrotomy or urethrostomy, external (separate procedure); pendulous urethra.
53010.....	2	1 Urethrotomy or urethrostomy, external (separate procedure); perineal urethra, external.
53020.....	2	1 Meatotomy, cutting of meatus (separate procedure); except infant.

Payment groups		
Old	New	
53040.....	2	2 Drainage of deep periurethral abscess
Excision		
53220.....	3	2 Excision or fulguration of carcinoma of urethra.
53230.....	3	2 Excision of urethral diverticulum (separate procedure); female.
53235.....	3	3 Excision of urethral diverticulum (separate procedure); male.
53240.....	3	2 Marsupialization of urethral diverticulum, male or female.
53265.....	3	2 Excision or fulguration; urethral caruncle.
53275.....	3	2 Excision or fulguration; urethral prolapse.
Repair		
53400.....	4	3 Urethroplasty; first stage, for fistula, diverticulum, or stricture, e.g., Johanssen type.
53405.....	4	2 Urethroplasty; second stage (formation of urethra), including urinary diversion.
53410.....	4	2 Urethroplasty, one-stage reconstruction of male anterior urethra.
53420.....	4	3 Urethroplasty, two-stage reconstruction or repair of prostatic or membranous urethra; first stage.
53425.....	4	2 Urethroplasty, two-stage reconstruction or repair of prostatic or membranous urethra; second stage.
53430.....	4	2 Urethroplasty, reconstruction of female urethra.
53440.....	4	2 Operation for correction of male urinary incontinence, with or without introduction of prosthesis.
53447.....	4	1 Removal, repair or replacement of inflatable sphincter including pump and/or reservoir and/or cuff.
53449.....	4	1 Surgical correction of hydraulic abnormality of inflatable sphincter device.
53450.....	4	1 Urethromeatoplasty, with mucosal advancement.
53460.....	4	1 Urethromeatoplasty, with partial excision of distal urethral segment (Richardson type procedure).
Suture		
53502.....	4	2 Urethrorrhaphy, suture of urethral wound or injury, female.
53510.....	4	2 Urethrorrhaphy, suture of urethral wound or injury; perineal.
53515.....	4	2 Urethrorrhaphy, suture of urethral wound or injury; prostatic/membranous.
53520.....	4	2 Closure of urethrostomy or urethrocutaneous fistula, male (separate procedure).
Manipulation		
*53600.....	1	2 Dilatation of urethral stricture by passage of sound or urethral dilator male; initial.
*53601.....	1	1 Dilatation of urethral stricture by passage of sound or urethral dilator, male; subsequent.
*53605.....	1	2 Dilatation of urethral stricture of vesical neck by passage of sound or urethral dilator, male, general or conduction (spinal) anesthesia.
*53620.....	1	1 Dilatation of urethral stricture by passage of filiform and follower, male; initial.
*53621.....	1	1 Dilatation of urethral stricture by passage of filiform and follower, male; subsequent.
*53660.....	1	1 Dilatation of female urethra including suppository and/or instillation; initial.
*53661.....	1	1 Dilatation of female urethra including suppository and/or instillation; subsequent.
*53665.....	1	1 Dilatation of female urethra, general or conduction (spinal) anesthesia.
Male genital system		
Penis		
Incision		
54001.....	1	2 Slitting of prepuce, dorsal or lateral, (separate procedure); except newborn.
Excision		
54105.....	1	1 Biopsy of penis; deep structures.
54110.....	3	2 Excision of penile plaque (Peyronie disease).
54115.....	3	1 Removal foreign body from deep penile tissue (e.g., plastic implant).
54120.....	3	2 Amputation of penis; partial.
54125.....	4	2 Amputation of penis; complete.
54152.....	2	1 Circumcision, clamp procedure; except newborn.
54161.....	2	2 Circumcision, surgical excision other than clamp or dorsal slit; except newborn.
Introduction		
54205.....	1	1 Injection procedure for Peyronie disease; with surgical exposure of plaque.
54220.....	1	1 Irrigation of corpora cavernosa for priapism.
54230.....	1	1 Injection procedure for corpora cavernosography.
Repair		
54440.....	4	5 Plastic operation of penis for injury.
Testis		
Excision		
54505.....	1	3 Biopsy of testis, incisional (separate procedure); unilateral.
54506.....	1	3 Bilateral.
54510.....	1	2 Excision of local lesion of testis.
*54520.....	2	3 Orchiectomy, simply (including subcapsular), with or without testicular prosthesis, scrotal or inguinal approach; unilateral.
*54521.....	2	4 Orchiectomy, simple (including subcapsular), with or without testicular prosthesis, scrotal or inguinal approach; bilateral.
54530.....	3	4 Orchiectomy, radical, for tumor; inguinal approach.
Repair		
54670.....	2	3 Suture or repair of testicular injury.
54680.....	4	3 Transplantation of testis(es) to thigh (because of scrotal destruction).
Epididymis		
Excision		
54700.....	2	2 Incision and drainage of epididymis, testis and/or scrotal space (e.g., abscess or hematoma).
54820.....	1	1 Exploration of epididymis, with or without biopsy.
54830.....	2	3 Excision of local lesion of epididymis.
*54840.....	3	4 Excision of spermatocele, with or without epididymectomy.
54860.....	3	4 Epididymectomy; unilateral.
54861.....	3	5 Epididymectomy; bilateral.
Repair		
54900.....	3	2 Epididymovasostomy, anastomosis of epididymis to vas deferens; unilateral.
54901.....	3	2 Epididymovasostomy, anastomosis of epididymis to vas deferens; bilateral.
Tunica Vaginalis		

Payment groups			
	Old	New	
Excision			
*55040	3	3	Excision of hydrocele; unilateral.
*55041	3	5	Excision of hydrocele; bilateral.
Repair			
55060	3	4	Repair of hydrocele (Bottle type).
Incision			
55120	1	2	Removal of foreign body in scrotum. Scrotum
Excision			
55150	3	1	Resection of scrotum.
Repair			
55175	3	1	Scrotoplasty; simple.
55180	3	2	Scrotoplasty; complicated. Vas Deferens
Repair			
55400	3	1	Vasovasostomy, vasovasorrhaphy; unilateral.
55401	3	5	Vasovasostomy, vasovasorrhaphy; bilateral. Spermatic Cord
Excision			
55500	3	3	Excision of hydrocele of spermatic cord, unilateral (separate procedure).
55520	3	4	Excision of lesion of spermatic cord (separate procedure).
*55530	4	4	Excision of varicocele or ligation of spermatic veins for varicocele (separate procedure).
55535	4	4	Excision of varicocele or ligation of spermatic veins for varicocele; abdominal approach.
55540	4	5	Excision of varicocele or ligation of spermatic veins for varicocele; with hernia repair. Seminal Vesicles
Incision			
55605	1	1	Vesiculotomy; complicated.
Excision			
55650	4	1	Vesiculectomy, any approach; unilateral.
55651	4	2	Vesiculectomy, any approach; bilateral.
55680	4	1	Excision of Mullerian duct cyst. Prostate
Incision			
*55700	1	2	Biopsy, prostate; needle or punch, single or multiple, any approach.
*55705	1	2	Biopsy, prostate; incisional any approach.
55720	1	1	Prostatotomy, external drainage of prostatic abscess, any approach; simple. Female Genital System
			Vagina
Perineum			
56000	2	2	Incision and drainage of perineal abscess (nonobstetrical). Vulva and Introitus
Incision			
56440	3	3	Marsupialization of Bartholin's gland cyst.
Destruction			
56515	3	3	Destruction of lesion(s), vulva; extensive, any method.
Excision			
56740	3	3	Excision of Bartholin's gland or cyst. Vagina
Incision			
57020	1	2	Colpocentesis (separate procedure).
Excision			
57105	3	2	Biopsy of vaginal mucosa; extensive, requiring suture (including cysts).
57130	3	2	Excision of vaginal septum.
Repair			
57268	4	2	Repair of enterocele, vaginal approach (separate procedure).
Manipulation			
*57400	1	2	Dilation of vagina under anesthesia.
*57410	1	2	Pelvic examination under anesthesia.
Endoscopy			
*57450	1	1	Culdoscopy, diagnostic. Cervix Uteri
Excision			
57520	2	2	Biopsy of cervix, circumferential (cone), with or without dilation and curettage, with or without Sturmdorff type repair.
Repair			
57720	3	3	Trachelorrhaphy, plastic repair of uterine cervix, vaginal approach.
Manipulation			
57820	2	3	Dilation and curettage of cervical stump. Corpus Uteri
Excision			
*58120	3	2	Dilation and curettage, diagnostic and/or therapeutic (nonobstetrical). Ovary

Payment groups			
Old	New		
Excision			
58900	4	3	Biopsy of ovary, unilateral or bilateral (separate procedure).
Endoscopy-Laparoscopy			
*58980	4	4	Laparoscopy for visualization of pelvic viscera.
*58984	4	5	Laparoscopy for visualization of pelvic viscera; with fulguration of ovarian or peritoneal lesions.
*58985	4	4	Laparoscopy for visualization of pelvic viscera; with lysis of adhesions.
*58986	4	4	Laparoscopy for visualization of pelvic viscera; with biopsy (single or multiple).
*58987	4	4	Laparoscopy for visualization of pelvic viscera; with aspiration (single or multiple).
Endocrine System			
Thyroid Gland			
Excision			
60200	3	2	Excision of cyst or adenoma of thyroid, or transection of isthmus.
60220	4	2	Total thyroid lobectomy, unilateral.
60225	4	3	Total thyroid lobectomy, unilateral; with contralateral subtotal lobectomy, including isthmus.
60280	3	4	Excision of thyroglossal duct cyst or sinus.
Nervous System			
Skull, Meninges, and Brain			
Puncture For Injection, Drainage or Aspiration			
61020	1	1	Ventricular puncture through previous burr hole, fontanelle, suture, or implanted ventricular catheter/reservoir; without injection.
61026	1	1	Ventricular puncture through previous burr hole, fontanelle, suture, or implanted ventricular catheter/reservoir; with injection of drug or other substance for diagnosis or treatment.
61050	1	1	Cisternal or lateral cervical puncture; without injection (separate procedure).
61070	1	1	Puncture of shunt tubing or reservoir for aspiration or injection procedure.
Spine and Spinal Cord			
Puncture For Injection, Drainage, or Aspiration			
62270	1	1	Spinal puncture, lumbar, diagnostic.
62273	1	1	Injection, lumbar epidural, of blood or clot patch.
62274	1	1	Injection of anesthetic substance, diagnostic or therapeutic; subarachnoid or subdural, simple.
62276	1	1	Injection of anesthetic substance, diagnostic or therapeutic; subarachnoid or subdural, differential.
62277	1	1	Injection of anesthetic substance, diagnostic or therapeutic; subarachnoid or subdural, continuous.
62278	1	1	Injection of anesthetic substance, diagnostic or therapeutic; epidural or caudal, single.
62279	1	1	Injection of anesthetic substance, diagnostic or therapeutic; epidural or caudal, continuous.
62288	1	1	Injection of substance other than anesthetic, contrast, or neurolytic solutions; subarachnoid (separate procedure).
62289	1	1	Injection of substance other than anesthetic, contrast, or neurolytic solutions; epidural or caudal.
Extracranial Nerves, Peripheral Nerves, and Autonomic Nervous System			
Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic			
Somatic Nerves			
64408	1	1	Injection, anesthetic agent; vagus nerve.
64410	1	1	Injection, anesthetic agent; phrenic nerve.
64415	1	1	Injection, anesthetic agent; brachial plexus.
64417	1	1	Injection, anesthetic agent; axillary nerve.
64420	1	1	Injection, anesthetic agent; intercostal nerve, single.
64421	1	1	Injection, anesthetic agent; intercostal nerves, multiple, regional block.
64430	1	1	Injection, anesthetic agent; pudendal nerve.
64442	1	1	Injection, anesthetic agent; paravertebral facet joint nerve, lumbar, single level.
64443	1	1	Injection, anesthetic agent; paravertebral facet joint nerve, lumbar, each additional level.
Sympathetic Nerves			
64510	2	1	Injection, anesthetic agent; stellate ganglion (cervical sympathetic).
64520	2	1	Injection, anesthetic agent; lumbar or thoracic (paravertebral sympathetic).
64530	2	1	Injection, anesthetic agent; celiac plexus, with or without radiologic monitoring.
Destruction by Neurolytic Agent (E.G., Chemical, Thermal, Electrical Radiofrequency)			
Somatic Nerves			

Payment groups			
Old	New		
64600	2	1	Destruction by neurolytic agent, trigeminal nerve; supraorbital, infraorbital, mental, or inferior alveolar branch.
64605	2	1	Destruction by neurolytic agent, trigeminal nerve; second and third division branches at foramen ovale.
64610	2	1	Destruction by neurolytic agent, trigeminal nerve; second and third division branches at foramen ovale under radiologic monitoring.
64622	2	1	Destruction by neurolytic agent, paravertebral facet joint nerve, lumbar, single level.
64630	2	2	Destruction by neurolytic agent, pudendal nerve.
Exploration, Neurolysis or Nerve Decompression (Neuroplasty)			
*64702	3	1	Neurolysis; digital, one or both, same digit.
*64704	3	1	Neurolysis; nerve of hand or foot.
*64708	3	2	Neurolysis; major peripheral nerve, arm or leg; other than specified.
64712	3	2	Neurolysis; major peripheral nerve, arm or leg; sciatic nerve.
64713	3	2	Neurolysis major peripheral nerve, arm or leg; brachial plexus.
64714	3	2	Neurolysis, major peripheral nerve, arm or leg; lumbar plexus.
*64716	4	3	Neurolysis and/or transposition; cranial nerve (specify).
*64718	4	2	Neurolysis and/or transposition; ulnar nerve at elbow.
*64719	4	2	Neurolysis and/or transposition; ulnar nerve at wrist.
*64721	3	2	Neurolysis and/or transposition; median nerve at carpal tunnel.
64722	3	1	Decompression; unspecified nerve(s) (specify).
64726	3	1	Decompression; plantar digital nerve.
64727	4	1	Internal neurolysis by dissection, with or without microdissection (list separately in addition to code for primary neuroplasty).
Transection or Avulsion of Nerve			
64732	3	2	Transection or avulsion of; supraorbital nerve.
64734	3	2	Transection or avulsion of; infraorbital nerve.
64736	3	2	Transection or avulsion of; mental nerve.
64738	3	2	Transection or avulsion of; inferior alveolar nerve by osteotomy.
64740	3	2	Transection or avulsion of; lingual nerve.
64742	3	2	Transection or avulsion of; facial nerve, differential or complete.
64744	3	2	Transection or avulsion of; greater occipital nerve.
64772	3	2	Transection or avulsion of other spinal nerve, extradural.
Excision-Somatic Nerves			
64774	3	3	Excision of neuroma; cutaneous nerve, surgically identifiable.
64776	3	3	Excision of neuroma; digital nerve, one or both, same digit.
64778	3	2	Excision of neuroma; digital nerve, each additional digit (list separately by this number).
*64782	3	3	Excision of neuroma; hand or foot, except digital nerve.
64784	3	3	Excision of neuroma; major peripheral nerve, except sciatic.
64786	3	3	Excision of neuroma; sciatic nerve.
64787	3	2	Insertion of plastic cap on nerve end.
64788	3	3	Excision of neurofibroma or neurolemmona; cutaneous nerve.
64790	3	3	Excision of neurofibroma or neurolemmona; major peripheral nerve.
64795	3	2	Biopsy of nerve.
Excision-Sympathetic Nerves			
64802	4	2	Sympathectomy, cervical; unilateral.
64803	4	3	Sympathectomy, cervical; bilateral.
Nerve Repair by Suture (Neurorrhaphy)			
64830	4	5	Microdissection and/or microrepair of nerve (list separately in addition to code for nerve repair).
64831	4	4	Suture of digital nerve, hand or foot; one nerve.
64832	4	1	Suture of digital nerve, hand or foot; each additional digital nerve.
64834	4	2	Suture of one nerve, hand or foot; common sensory nerve.
64835	4	3	Suture of one nerve, hand or foot; median motor thenar.
64836	4	3	Suture of one nerve, hand or foot; ulnar motor.
64837	4	1	Suture of each additional nerve, hand or foot.
64840	4	2	Suture of posterior tibial nerve.
64856	4	2	Suture of major peripheral nerve, arm or leg, except sciatic; including transportation.
64857	4	2	Suture of major peripheral nerve, arm or leg, except sciatic; without transportation.
64872	4	2	Suture of nerve; requiring secondary or delayed suture (list separately in addition to code for primary neurorrhaphy).
64874	4	3	Suture of nerve; requiring extensive proximal mobilization, or transposition of nerve (list separately in addition to code for nerve suture).
64876	4	3	Suture of nerve; requiring shortening of bone of extremity (list separately in addition to code for nerve suture).
Neurorrhaphy With Nerve Graft			
64890	4	2	Nerve graft (includes obtaining graft), single strand, hand or foot; up to 4 cm length.
64891	4	2	Nerve graft (includes obtaining graft), single strand, hand or foot; more than 4 cm length.
64892	4	2	Nerve graft (includes obtaining graft), single strand, arm or leg; up to 4 cm length.
64893	4	2	Nerve graft (includes obtaining graft), single strand, arm or leg; more than 4 cm length.
64895	4	3	Nerve graft (includes obtaining graft), multiple strands (cable), hand or foot; up to 4 cm length.
64896	4	3	Nerve graft (includes obtaining graft), multiple strands (cable), hand or foot; more than 4 cm length.
64897	4	3	Nerve graft (includes obtaining graft), multiple strands (cable), arm or leg; up to 4 cm length.
64898	4	3	Nerve graft (includes obtaining graft), multiple strands (cable), arm or leg; more than 4 cm length.
64901	4	2	Nerve graft, each additional nerve; single strand.
64902	4	2	Nerve graft, each additional nerve; multiple strands (cable).
64905	4	2	Nerve pedicle transfer; first stage.
64907	4	1	Nerve pedicle transfer; second stage.
Eye/Ocular Adnexa			
Eyeball			
Removal of Eye			
*65091	4	3	Evisceration of ocular contents; without implant.
*65093	4	6	Evisceration of ocular contents; with implant.
*65101	4	3	Enucleation of eye; without implant.
*65103	4	4	Enucleation of eye; with implant, muscles not attached to implant.

Payment groups		
Old	New	
*65105.....	4	4 Enucleation of eye; with implant, muscles attached to implant.
65110.....	4	3 Exenteration of orbit (does not include skin graft), removal of orbital contents; only.
Secondary Implant procedures		
65130.....	3	3 Insertion of ocular implant secondary; after evisceration, in scleral shell.
65135.....	3	2 Insertion of ocular implant secondary; after enucleation, muscles not attached to implant.
65140.....	3	3 Insertion of ocular implant secondary; after enucleation, muscles attached to implant.
65150.....	3	2 Reinsertion of ocular implant; with or without conjunctival graft.
65155.....	3	3 Reinsertion of ocular implant; with use of foreign material for reinforcement and/or attachment of muscles to implant.
65175.....	3	1 Removal of ocular implant.
Removal of ocular foreign body		
*65230.....	1	1 Removal of foreign body, intraocular; from anterior chamber, magnetic extraction.
*65235.....	1	2 Removal of foreign body, intraocular; from anterior chamber, nonmagnetic extraction.
65245.....	4	2 Removal of foreign body, intraocular; from lens (without extraction lens), nonmagnetic extraction.
65260.....	4	2 Removal of foreign body, intraocular; from posterior segment, magnetic extraction, anterior or posterior route.
65265.....	4	3 Removal of foreign body, intraocular; from posterior segment, nonmagnetic extraction.
Repair of Laceration of eyeball		
65272.....	2	2 Repair of laceration; conjunctiva, by mobilization and rearrangement, without hospitalization.
65280.....	4	4 Repair of laceration; cornea and/or sclera, perforating, not involving uveal tissue.
65285.....	4	4 Repair of laceration; cornea and/or sclera, perforating, with reposition or resection of uveal tissue.
65290.....	3	3 Repair of wound, extraocular muscle, tendon and/or Tenon's capsule.
Anterior Segment—Cornea		
Excision		
65400.....	1	1 Excision of lesion, cornea (keratectomy, lamellar, partial), except pterygium.
65410.....	1	2 Biopsy of cornea.
*65420.....	1	2 Excision or transposition of pterygium; without graft.
65426.....	1	5 Excision or transposition of pterygium; with graft.
Keratoplasty		
65710.....	4	6 Keratoplasty (corneal transplant), lamellar; autograft.
65720.....	4	6 Keratoplasty (corneal transplant), lamellar; homograft, fresh.
65725.....	4	6 Keratoplasty (corneal transplant), lamellar; homograft, preserved.
65730.....	4	6 Keratoplasty (corneal transplant), penetrating (except in aphakia); autograft.
65740.....	4	6 Keratoplasty (corneal transplant), penetrating (except in aphakia); homograft, fresh.
65745.....	4	6 Keratoplasty (corneal transplant), penetrating (except in aphakia); homograft, preserved.
65750.....	4	6 Keratoplasty (corneal transplant), penetrating, in aphakia.
Anterior Segment—Anterior Chamber		
Incision		
65800.....	1	2 Paracentesis of anterior chamber of eye (separate procedure); with diagnostic aspiration of aqueous.
65805.....	1	2 Paracentesis of anterior chamber of eye (separate procedure); with therapeutic release of aqueous.
65810.....	4	2 Paracentesis of anterior chamber of eye (separation procedure); with removal of vitreous and/or discission of anterior hyaloid membrane, with or without air injection.
65815.....	1	2 Paracentesis of anterior chamber of eye (separate procedure); with removal of blood, with or without irrigation and/or air injection.
Other procedures		
65865.....	1	1 Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure); goniosynechia.
65870.....	1	4 Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure); anterior synchia, except goniosynechia.
65875.....	1	4 Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure); posterior synchia.
65880.....	1	4 Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure); corneovitreal adhesions.
65900.....	4	4 Removal of epithelial downgrowth, anterior chamber eye.
65920.....	4	6 Removal of implanted material, anterior segment eye.
65930.....	4	5 Removal of blood clot, anterior segment eye.
66020.....	1	1 Injection, anterior chamber (separate procedure); air or liquid.
66030.....	1	1 Injection, anterior chamber (separate procedure); medication.
Anterior Segment—Anterior Sclera		
Excision		
66130.....	4	6 Excision of lesion, sclera.
66150.....	4	2 Fistulization of sclera for glaucoma; trephination with iridectomy.
66155.....	4	2 Fistulization of sclera for glaucoma; thermocauterization with iridectomy.
66160.....	4	2 Fistulization of sclera for glaucoma; sclerectomy with punch or scissors, with iridectomy.
66165.....	4	2 Fistulization of sclera for glaucoma; iridencleisis or iridotasis.
66170.....	4	3 Fistulization of sclera for glaucoma; trabeculectomy ab externo.
Repair		
66220.....	4	2 Repair of scleral staphyloma; without graft.
66225.....	4	3 Repair of scleral staphyloma; with graft.
Revision operation wound		
66250.....	4	1 Revision or repair of operative wound of anterior segment, any type, early or late, major or minor procedure.
Anterior segment—Iris, ciliary body		
Iridotomy, Iridectomy		
66500.....	1	1 Iridotomy by stab incision (separate procedure); except transfixion.
66505.....	1	1 Iridotomy by stab incision (separate procedure); with transfixion as for iris bombe.
*66600.....	4	3 Iridectomy, with corneoscleral or corneal section; for removal of lesion.
66605.....	3	3 Iridectomy with corneoscleral or corneal section; with cycloectomy.
*66625.....	4	3 Iridectomy, with corneoscleral or corneal section; peripheral for glaucoma (separate procedure).
*66630.....	4	3 Iridectomy, with corneoscleral or corneal section; sector for glaucoma (separate procedure).
*66635.....	4	3 Iridectomy, with corneoscleral or corneal section; "optical" (separate procedure).

Payment groups			
	Old	New	
Repair			
66680	4	3	Repair of iris, ciliary body (as for iridodialysis).
66682	4	2	Suture of iris, ciliary body (separate procedure) with retrieval of suture through small incision (e.g., McCannel suture).
Destruction			
66700	1	1	Cyclodiathermy; initial.
66701	1	1	Cyclodiathermy; subsequent.
66720	1	2	Cyclocryotherapy; initial.
66721	3	2	Cyclocryotherapy; subsequent.
66741	3	2	Cyclodialysis; subsequent.
66762	3	1	Coreoplasty by photocoagulation (one or more sessions) (e.g., for improvement of vision).
			Anterior segment-lens
Incision			
*66800	1	1	Dissection of lens capsule; incisional technique (needling of lens); initial.
*66801	1	1	Dissection of lens capsule; incisional technique (needling of lens); subsequent.
66821	1	2	Dissection of secondary membranous cataract ("after cataract") and/or anterior hyaloid; laser surgery (one or more stages).
Removal cataract			
*66830	4	4	Removal of secondary membranous cataract ("after cataract"), with corneoscleral section, with or without iridectomy (iridocapsulotomy, iridocapsulectomy).
*66840	4	4	Removal of lens material; aspiration technique, one or more stages.
*66850	4	6	Removal of lens material; phacofragmentation technique (mechanical or ultrasonic, e.g., phacoemulsification), with aspiration.
66915	4	2	Expression of lens, linear, one or more stages.
*66920	4	4	Extraction of lens with or without iridectomy; intracapsular, with or without enzymes.
*66930	4	5	Extraction of lens with or without iridectomy; intracapsular, for dislocated lens.
*66940	4	5	Extraction of lens with or without iridectomy; extracapsular (other than 66840, 66850, 66915).
66945	4	5	Extraction of lens with or without iridectomy; in presence of fistulization bleb and/or by temporal, inferior or inferotemporal route, intracapsular or extracapsular.
*66983	5	6	Intracapsular cataract extraction with insertion of intraocular lens prosthesis (one stage procedure).
66984	5	6	Extracapsular cataract removal with insertion of intraocular lens prosthesis (one stage procedure), manual or phacoemulsification technique.
*66985	4	5	Insertion of intraocular lens subsequent to cataract removal (separate procedure).
Posterior segment-vitreous			
67005	4	3	Removal of vitreous, anterior approach (open sky technique or limbal incision); partial removal.
67010	4	3	Removal of vitreous, anterior approach (open sky technique or limbal incision); subtotal removal with mechanical vitrectomy (such as VISC or Rotoextractor).
67015	2	1	Aspiration or release of vitreous, subretinal or choroidal fluid, pars plana approach (posterior sclerotomy).
67025	2	1	Injection of vitreous substitute, pars plana approach (separate procedure) excludes air or balanced salt solutions.
67030	2	1	Dissection of vitreous strands (without removal), pars plana approach.
67036	4	3	Vitrectomy, mechanical, pars plana approach.
Repair			
67101	4	3	Repair of retinal detachment, one or more sessions, same hospitalization, cryotherapy or diathermy, with or without drainage or subretinal fluid.
67107	4	3	Repair of retinal detachment (one or more stages, same hospitalization); scleral buckling (such as lamella excision, imbrication or encircling procedure), with or without implant, may include procedures 67101-67105.
67108	4	3	Repair of retinal detachment (one or more stages, same hospitalization); with vitrectomy, any method, with or without air tamponade, may include procedures 67101-67107 and/or removal of lens by same technique.
67109	4	3	Repair of retinal detachment (one or more stages, same hospitalization); by technique other than 67101-67108.
67120	4	2	Removal of implanted material, posterior segment, extracapsular.
Destruction-retina, choroid			
67208	1	1	Destruction of localized lesion of retina (e.g., maculopathy, choroidopathy, small tumors), one or more sessions; cryotherapy, diathermy.
67218	1	3	Destruction of localized lesion, retina or choroid (e.g., choroidopathy), one or more stages; radiation by implantation of source (includes removal of source).
67227	1	1	Destruction of extensive or progressive retinopathy (e.g., diabetic retinopathy), one or more sessions; cryotherapy, diathermy.
Scleral repair			
67250	4	1	Scleral reinforcement (separate procedure); without graft.
67255	4	2	Scleral reinforcement (separate procedure); with graft.
*67311	4	3	Strabismus surgery on patient not previously operated on, any procedure, any muscle (may include minor displacement, e.g., for A or V pattern); one muscle.
67312	4	4	Strabismus surgery on patient not previously operated on, any procedure, any muscle (may include minor displacement, e.g., for A or V pattern); two muscles, one or both eyes.
*67313	4	5	Strabismus surgery on patient not previously operated on, any procedure, any muscle (may include minor displacement, e.g., for A or V pattern); three or more muscles, and/or adjustable suture, one or both eyes.
67320	3		Ocular adnexa-extraocular muscles
67331	3	4	Transposition of extraocular muscle (e.g., for paretic muscle), one or more stages, one or more muscles, with displacement of plane of action more than 5mm.
67332	3	4	Strabismus surgery on patient previously operated on; not involving reoperation of muscles.
Other procedures			
67350	3	1	Biopsy of extraocular muscle.
Exploration, excision			
67400	4	2	Orbitotomy without bone flap (frontal approach); for exploration, with or without biopsy.
67405	4	3	Orbitotomy without bone flap (frontal approach); with drainage only.
67412	4	3	Orbitotomy without bone flap (frontal approach); with removal of lesion.

Payment groups			
	Old	New	
67413.....	4	5	Orbitotomy without bone flap (frontal approach); with removal of foreign body.
67415.....	1	1	Transconjunctival or aspirational biopsy.
Other procedures			
67550.....	4	4	Orbital implant (implant outside muscle cone); insertion.
67560.....	4	2	Orbital implant (implant outside muscle cone); removal or revision.
			Ocular adnexa-eyelids
Incision			
67715.....	1	1	Canthotomy (separate procedure).
Excision or removal of lesion involving more than skin (i.e., involving lid margin, tarsus, and/or palpebral conjunctiva)			
*67801.....	1	2	Excision of chalazion; multiple, same lid.
*67808.....	1	2	Excision of chalazion; under general anesthesia and/or requiring hospitalization, single or multiple.
67830.....	3	2	Correction of trichiasis; incision of lid margin.
67835.....	2	2	Correction of trichiasis; incision of lid margin, with free mucous membrane graft.
Tarsorrhaphy			
67880.....	1	3	Construction of intermarginal adhesions, median tarsorrhaphy, or canthorrhaphy.
67882.....	3	3	Construction of intermarginal adhesions, median tarsorrhaphy, or canthorrhaphy; with transportation of tarsal plate.
Repair blepharoptosis, lid retraction			
67901.....	1	5	Repair of blepharoptosis; frontalis muscle technique with suture.
67902.....	3	5	Repair of blepharoptosis; frontalis muscle technique with fascial sling (includes obtaining fascia).
67903.....	3	3	Repair of blepharoptosis; (tarsal) levator resection, internal approach.
67904.....	3	4	Repair of blepharoptosis; (tarsal) levator resection, external approach.
67906.....	3	3	Repair of blepharoptosis; superior rectus technique with fascial sling (includes obtaining fascia).
67907.....	3	3	Repair of blepharoptosis; superior rectus tendon transplant.
67908.....	1	4	Repair of blepharoptosis; conjunctivo-tarsal-levator resection (Fasanella-Servat type).
67909.....	1	3	Reduction of overcorrection of ptosis.
Repair ectropion, entropion			
*67914.....	3	3	Repair of ectropion; suture.
*67916.....	3	4	Repair of ectropion; blepharoplasty, excision tarsal wedge.
*67917.....	3	3	Repair of ectropion; blepharoplasty, extensive (e.g., Kuhnt-Szymanowski operation).
*67921.....	3	4	Repair of entropion; suture.
*67923.....	3	4	Repair of entropion; blepharoplasty, excision tarsal wedge.
*67924.....	3	4	Repair of entropion; blepharoplasty, extensive (e.g., Wheeler operation).
Reconstructive surgery, blepharoplasty involving more than skin (i.e., involving lid margin, tarsus, and/or palpebral conjunctiva)			
67935.....	2	1	Suture of recent wound, eyelid, involving lid margin, tarsus, and/or palpebral conjunctiva) direct closure; full thickness.
*67950.....	2	2	Canthoplasty (reconstruction of canthus).
67961.....	3	3	Excision and repair of eyelid, involving lid margin, tarsus, conjunctiva, canthus, or full thickness, may include preparation for skin graft or pedicle flap with adjacent tissue transfer or rearrangement; up to one-fourth of lid margin.
67966.....	3	3	Excision and repair of eyelid, involving lid margin, tarsus, conjunctiva, or full thickness, may include preparation for skin graft or pedicle flap with adjacent tissue transfer or rearrangement; over one-fourth of lid margin.
67971.....	3	3	Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; up to two-thirds of eyelid, one stage or first stage.
67973.....	3	3	Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; total eyelid, lower, one stage or first stage.
67974.....	3	3	Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; total eyelid, upper, one stage or first stage.
67975.....	3	3	Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; second stage.
			Ocular adnexa-conjunctiva
Excision, destruction			
68130.....	1	2	Excision of lesion, conjunctiva; with adjacent sclera.
Conjunctivoplasty			
68320.....	2	4	Conjunctivoplasty; with conjunctival graft or extensive rearrangement.
68325.....	2	4	Conjunctivoplasty; with buccal mucous membrane graft (includes obtaining graft).
68326.....	2	4	Conjunctivoplasty, reconstruction cul-de-sac; with conjunctival graft or extensive rearrangement.
68328.....	3	4	Conjunctivoplasty, reconstruction cul-de-sac; with buccal mucous membrane graft (includes obtaining graft).
Other procedures			
68360.....	2	2	Conjunctival flap; bridge or partial (separate procedure).
68362.....	2	2	Conjunctival flap; total (such as Gunderson thin flap or purse string flap).
			Ocular adnexa-lacrimal system
Excision			
68500.....	3	1	Excision of lacrimal gland (dacryoadenectomy), except for tumor; total.
68505.....	3	1	Excision of lacrimal gland (dacryoadenectomy), except for tumor; partial.
68510.....	3	1	Biopsy of lacrimal gland.
68520.....	3	3	Excision of lacrimal sac (dacryocystectomy).
Excision			
68540.....	4	3	Excision of lacrimal gland tumor; frontal approach involving osteotomy.
68550.....	4	3	Excision of lacrimal gland tumor; frontal approach.
Repair			
*68700.....	1	2	Plastic repair on canaliculi.
68720.....	3	3	Dacryocystorhinostomy (fistulization of lacrimal sac to nasal cavity).
68745.....	3	3	Conjunctivorhinostomy (fistulization of conjunctiva to nasal cavity); without tube.
68750.....	3	3	Conjunctivorhinostomy (fistulization of conjunctiva to nasal cavity); with insertion of tube or stent.
Probing and related procedures			
*68830.....	1	2	Probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral; with insertion of tube or stent (without general anesthesia).
			Auditory system
			External ear
Excision			
69105.....	1	1	Biopsy external auditory canal.
69110.....	2	1	Excision external ear; partial, simple repair.

Payment groups		
Old	New	
69120.....	3	2 Excision external ear; complete amputation.
69140.....	2	1 Excision exostosis(es), external auditory canal.
69145.....	2	3 Excision soft tissue lesion, external auditory canal.
69150.....	4	3 Radical excision external auditory canal lesion; without neck dissection.
		Middle ear
Incision		
*69420.....	1	2 Myringotomy including aspiration and/or eustachian tube inflation.
69440.....	3	3 Middle ear exploration through postauricular or ear canal incision.
69450.....	3	1 Tympanolysis, transcanal.
Excision		
*69501.....	4	6 Transmastoid antrotomy ("simple" mastoidectomy).
Repair		
*69620.....	4	2 Myringoplasty (surgery confined to drumhead and donor area).
*69631.....	4	5 Tympanoplasty without mastoidectomy (including canalplasty, atticotomy and/or middle ear surgery), initial or revision; without ossicular chain reconstruction.
69632.....	4	5 Tympanoplasty without mastoidectomy (including canalplasty, atticotomy and/or middle ear surgery), initial or revision; with ossicular chain reconstruction, e.g., postfenestration.
69633.....	4	5 Tympanoplasty without mastoidectomy (including canalplasty, atticotomy and/or middle ear surgery), initial or revision; with ossicular chain reconstruction and synthetic prosthesis (e.g., total ossicular replacement prosthesis, TORP).
69635.....	4	6 Tympanoplasty with antrotomy or mastoidectomy (including canalplasty, atticotomy, middle ear surgery, and/or tympanic membrane repair); without ossicular chain reconstruction.
69636.....	4	6 Tympanoplasty with antrotomy or mastoidectomy (including canalplasty, atticotomy, middle ear surgery, and/or tympanic membrane repair); with ossicular chain reconstruction.
69637.....	4	6 Tympanoplasty with antrotomy or mastoidectomy (including canalplasty, atticotomy, middle ear surgery, and/or tympanic membrane repair); with ossicular chain reconstruction and synthetic prosthesis (e.g., total ossicular replacement prosthesis, TORP).
69641.....	4	6 Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); without ossicular chain reconstruction.
69642.....	4	6 Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); with ossicular chain reconstruction.
69643.....	4	6 Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); with intact or reconstructed wall, without ossicular chain reconstruction.
69644.....	4	6 Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); with intact or reconstructed canal wall, with ossicular chain reconstruction.
69645.....	4	6 Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); radical or complete, without ossicular chain reconstruction.
69646.....	4	6 Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); radical or complete, with ossicular chain reconstruction.
*69650.....	4	6 Stapes mobilization.
*69660.....	4	5 Stapedectomy with reestablishment of ossicular continuity, with or without use of foreign material.
69661.....	4	5 Stapedectomy with reestablishment of ossicular continuity, with or without use of foreign material; with footplate drill out.
69666.....	4	2 Repair oval window fistula.
69667.....	4	3 Repair round window fistula.
69670.....	4	3 Mastoid obliteration (separate procedure).
69676.....	4	3 Tympanic neurectomy; unilateral.
69677.....	4	4 Tympanic neurectomy; bilateral.
		External ear
Other procedures		
69700.....	2	3 Closure postauricular fistula, mastoid (separate procedure).
		Middle ear
Other procedures		
69720.....	4	2 Decompression facial nerve, intratemporal; lateral to geniculate ganglion.
69725.....	4	2 Decompression facial nerve, intratemporal; including medial to geniculate ganglion.
69740.....	4	2 Suture facial nerve, intratemporal, with or without graft or decompression; lateral to geniculate ganglion.
69745.....	4	2 Suture facial nerve, intratemporal, with or without graft or decompression; including medial to geniculate ganglion.
		Female genital
Gynecological and obstetrical		
*74741.....	2	2 Hysterosalpingography; complete procedure.

Addendum B

Proposed Reclassification of Certain Procedure Codes

The following procedure codes were reclassified from lower to higher payment groups because the cost data placed them in lower groups than similar but less complex procedures.

Procedure code	Actual group based on cost	Proposed group
11446.....	1	2
11606.....	1	2

Procedure code	Actual group based on cost	Proposed group	Procedure code	Actual group based on cost	Proposed group
11626.....	1	2	23150.....	1	4
13132.....	2	3	24160.....	1	2
13152.....	1	3	25023.....	2	3
14061.....	1	3	25263.....	1	2
14350.....	2	3	25310.....	2	3
15515.....	3	4	25320.....	1	3
15610.....	1	3	25628.....	2	3
15630.....	1	3	26124.....	3	4
15755.....	1	3	26205.....	2	3
20245.....	2	3	26474.....	1	2
20926.....	3	4	26650.....	1	2
21338.....	3	4	26686.....	1	3
21340.....	2	4	27305.....	1	2
21365.....	4	5	27792.....	2	3

Procedure code	Actual group based on cost	Proposed group	Procedure code	Actual group based on cost	Proposed group	Procedure code	Actual group based on cost	Proposed group
28011.....	1	2	24515.....	5	4	40510.....	3	2
28122.....	2	3	24575.....	5	3	40654.....	6	3
28175.....	1	3	24585.....	5	4	40814.....	3	2
28755.....	2	4	24665.....	5	4	40844.....	6	5
28760.....	2	4	25028.....	2	1	41000.....	2	1
28825.....	1	2	25100.....	4	2	42106.....	3	2
30450.....	5	6	25150.....	3	2	42107.....	6	2
31031.....	2	3	25265.....	4	3	42325.....	3	2
31535.....	1	2	25274.....	6	4	42665.....	2	1
37760.....	2	3	25312.....	6	4	43202.....	2	1
42120.....	3	4	25515.....	5	3	43215.....	3	1
43251.....	1	2	25535.....	2	1	46250.....	5	3
45020.....	1	2	25575.....	4	3	46260.....	6	3
46060.....	1	2	25605.....	5	3	46275.....	5	3
46262.....	3	4	25620.....	4	3	46750.....	6	3
49525.....	3	4	25635.....	6	1	46924.....	3	1
49575.....	3	4	26215.....	4	3	49300.....	5	2
52601.....	1	3	26230.....	6	2	49590.....	4	3
55535.....	3	4	26392.....	4	3	51010.....	3	1
65710.....	1	6	26410.....	4	3	52010.....	3	2
65745.....	4	6	26433.....	4	3	52224.....	3	2
65815.....	1	2	26434.....	4	3	52235.....	4	3
65875.....	1	4	26455.....	6	3	52270.....	5	2
66225.....	1	3	26460.....	4	3	52275.....	5	2
66630.....	2	3	26471.....	6	2	52285.....	3	2
67412.....	1	3	26480.....	4	3	52310.....	3	2
67906.....	1	3	26483.....	5	3	52315.....	3	2
67924.....	3	4	26485.....	5	2	52330.....	5	2
67966.....	1	3	26499.....	4	3	52340.....	5	3
68362.....	1	2	26516.....	2	1	53020.....	2	1
69150.....	1	3	26525.....	4	3	53230.....	4	2
69632.....	4	5	26685.....	5	3	53410.....	3	2
69637.....	4	6	26710.....	5	2	53520.....	3	2
69641.....	5	6	26730.....	3	2	54115.....	2	1
			26744.....	3	2	54152.....	2	1
			26841.....	5	4	55150.....	2	1
			26843.....	4	3	55400.....	6	1
			26860.....	4	3	60220.....	5	2
			26861.....	5	2	64702.....	3	1
			26862.....	5	4	64704.....	4	1
			27420.....	4	3	64708.....	3	2
			27635.....	4	3	64718.....	4	2
			27640.....	4	2	64719.....	3	2
			27654.....	6	3	64721.....	3	2
			27664.....	4	2	64722.....	2	1
			27675.....	4	2	64726.....	3	1
			27685.....	4	3	64732.....	4	2
			27686.....	6	3	64788.....	4	3
			27756.....	6	3	64832.....	4	1
			27766.....	4	3	64834.....	3	2
			28110.....	4	3	64835.....	6	3
			28111.....	4	3	64836.....	5	3
			28113.....	4	3	64872.....	3	2
			28173.....	5	3	64890.....	4	2
			28200.....	5	3	64895.....	6	3
			28208.....	5	3	65091.....	5	3
			28225.....	2	1	65101.....	4	3
			28240.....	4	3	65103.....	6	4
			28250.....	4	3	65130.....	6	3
			28260.....	4	3	65150.....	1	2
			28299.....	6	5	65280.....	5	4
			28405.....	3	2	65865.....	5	1
			28465.....	6	3	66150.....	3	2
			28500.....	4	3	66155.....	3	2
			28675.....	6	3	66160.....	4	2
			28820.....	3	2	66500.....	4	1
			29874.....	6	3	66600.....	5	3
			29881.....	6	3	66625.....	4	3
			30125.....	5	2	66635.....	4	3
			31070.....	3	2	66721.....	4	2
			31510.....	3	2	67005.....	6	3
			31515.....	3	1	67107.....	5	3
			31525.....	2	1	67320.....	6	4
			37700.....	4	2	67331.....	5	4
			37701.....	4	3	67332.....	5	4
			37720.....	4	3	67801.....	3	2
			37730.....	4	3	67830.....	3	2
			38731.....	4	3	67835.....	3	2
			38305.....	3	2	67975.....	6	3
			38760.....	4	2	68326.....	6	4
			40500.....	3	2	68750.....	6	3

The following procedure codes were reclassified into lower payment groups because the cost data placed them in higher groups than similar but more complex procedures.

Procedure code	Actual group based on cost	Proposed group
11600.....	2	1
11620.....	3	1
11622.....	2	1
11624.....	2	1
11640.....	2	1
11771.....	4	3
12036.....	3	2
12056.....	3	2
14041.....	6	3
14300.....	5	4
15220.....	4	2
15221.....	4	2
15505.....	4	3
15510.....	5	4
15600.....	5	3
15720.....	3	2
19101.....	4	3
20240.....	3	2
20900.....	5	3
20902.....	5	4
21310.....	3	2
21453.....	6	3
21480.....	4	1
23000.....	3	2
23020.....	3	2
23066.....	3	2
23180.....	6	4
23515.....	5	3
24075.....	3	2
24120.....	4	3
24130.....	5	3
24340.....	4	3
24351.....	4	3
24352.....	6	3

Procedure code	Actual group based on cost	Proposed group
69661.....	6	5

Addendum C

TABLE A.—WAGE INDEX FOR URBAN AREAS

Urban Area (Constituent counties or county equivalents)	Wage index
Abilene, TX.....	0.8335
Taylor, TX.....	
Aguadilla, PR.....	.4624
Aguada, PR.....	
Aguadilla, PR.....	
Isabella, PR.....	
Moca, PR.....	
Akron, OH.....	1.0023
Portage, OH.....	
Summit, OH.....	
Albany, GA.....	.7748
Dougherty, GA.....	
Lee, GA.....	
Albany-Schenectady-Troy, NY.....	.8702
Albany, NY.....	
Greene, NY.....	
Montgomery, NY.....	
Rensselaer, NY.....	
Saratoga, NY.....	
Schenectady, NY.....	
Albuquerque, NM.....	1.0188
Bernalillo, NM.....	
Alexandria, LA.....	.8182
Rapids, LA.....	
Allentown-Bethlehem, PA-NJ.....	.9858
Warren, NJ.....	
Carbon, PA.....	
Lehigh, PA.....	
Northampton, PA.....	
Altoona, PA.....	.9474
Blair, PA.....	
Amarillo, TX.....	.9326
Potter, TX.....	
Randall, TX.....	
Anaheim-Santa Ana, CA.....	1.2031
Orange, CA.....	
Anchorage, AK.....	1.4619
Anchorage, AK.....	
Anderson, IN.....	.9175
Madison, IN.....	
Anderson, SC.....	.7839
Anderson, SC.....	
Ann Arbor, MI.....	1.1723
Washtenaw, MI.....	
Anniston, AL.....	.7847
Calhoun, AL.....	
Appleton-Oshkosh-Neenah, WI.....	.9792
Calumet, WI.....	
Outagamie, WI.....	
Winnebago, WI.....	
Arecibo, PR.....	.4401
Arecibo, PR.....	
Camuy, PR.....	
Hatillo, PR.....	
Quebradillas, PR.....	
Asheville, NC.....	.8501
Buncombe, NC.....	
Athens, GA.....	.7710
Clarke, GA.....	
Jackson, GA.....	
Madison, GA.....	
Oconee, GA.....	
Atlanta, GA.....	.9196
Barrow, GA.....	
Butts, GA.....	
Cherokee, GA.....	
Clayton, GA.....	
Cobb, GA.....	

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Coweta, GA.....	
De Kalb, GA.....	
Douglas, GA.....	
Fayette, GA.....	
Forsyth, GA.....	
Fulton, GA.....	
Gwinnett, GA.....	
Henry, GA.....	
Newton, GA.....	
Paulding, GA.....	
Rockdale, GA.....	
Spalding, GA.....	
Walton, GA.....	
Atlantic City, NJ.....	.9898
Atlantic, NJ.....	
Cape May, NJ.....	
Augusta, GA-SC.....	.8908
Columbia, GA.....	
McDuffie, GA.....	
Richmond, GA.....	
Aiken, SC.....	
Aurora-Elgin, IL.....	1.0123
Kane, IL.....	
Kendall, IL.....	
Austin, TX.....	1.0409
Hays, TX.....	
Travis, TX.....	
Williamson, TX.....	
Bakersfield, CA.....	1.1114
Kern, CA.....	
Baltimore, MD.....	1.0178
Anne Arundel, MD.....	
Baltimore, MD.....	
Baltimore City, MD.....	
Carroll, MD.....	
Harford, MD.....	
Howard, MD.....	
Queen Annes, MD.....	
Bangor, ME.....	.8907
Penobscot, ME.....	
Baton Rouge, LA.....	.8665
Ascension, LA.....	
East Baton Rouge, LA.....	
Livingston, LA.....	
West Baton Rouge, LA.....	
Battle Creek, MI.....	.9670
Calhoun, MI.....	
Beaumont-Port Arthur, TX.....	.9394
Hardin, TX.....	
Jefferson, TX.....	
Orange, TX.....	
Beaver County, PA.....	1.0368
Beaver, PA.....	
Bellingham, WA.....	1.0823
Whatcom, WA.....	
Benton Harbor, MI.....	.8436
Berrien, MI.....	
Bergen-Passaic, NJ.....	1.0299
Bergen, NJ.....	
Passaic, NJ.....	
Billings, MT.....	.9756
Yellowstone, MT.....	
Biloxi-Gulfport, MS.....	.8012
Hancock, MS.....	
Harrison, MS.....	
Binghamton, NY.....	.9107
Broome, NY.....	
Tioga, NY.....	
Birmingham, AL.....	.9226
Blount, AL.....	
Jefferson, AL.....	
Saint Clair, AL.....	
Shelby, AL.....	
Walker, AL.....	
Bismarck, ND.....	.9315

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Burleigh, ND.....	
Morton, ND.....	
Bloomington, IN.....	.9215
Monroe, IN.....	
Bloomington-Normal, IL.....	.9463
McLean, IL.....	
Boise City, ID.....	.9821
Ada, ID.....	
Boston-Lawrence-Salem-Lowell-Brockton, MA.....	1.0825
Essex, MA.....	
Middlesex, MA.....	
Norfolk, MA.....	
Plymouth, MA.....	
Suffolk, MA.....	
Boulder-Longmont, CO.....	1.0717
Boulder, CO.....	
Bradenton, FL.....	.8796
Manatee, FL.....	
Brazoria, TX.....	.8333
Brazoria, TX.....	
Bremerton, WA.....	.9407
Kitsap, WA.....	
Bridgeport-Stamford-Norwalk-Danbury, CT.....	1.1230
Fairfield, CT.....	
Brownsville-Harlingen, TX.....	.8538
Cameron, TX.....	
Bryan-College Station, TX.....	.9377
Brazos, TX.....	
Buffalo, NY.....	.9726
Erie, NY.....	
Burlington, NC.....	.7548
Alamance, NC.....	
Burlington, VT.....	.9464
Chittenden, VT.....	
Grand Isle, VT.....	
Caguas, PR.....	.4001
Caguas, PR.....	
Gurabo, PR.....	
San Lorenz, PR.....	
Agua Buenas, PR.....	
Cayey, PR.....	
Cidra, PR.....	
Canton, OH.....	.9195
Carroll, OH.....	
Stark, OH.....	
Casper, WY.....	.9842
Natrona, WY.....	
Cedar Rapids, IA.....	.9242
Linn, IA.....	
Champaign-Urbana-Rantoul, IL.....	.9141
Champaign, IL.....	
Charleston, SC.....	.8467
Berkeley, SC.....	
Charleston, SC.....	
Dorchester, SC.....	
Charleston, WV.....	.9757
Kanawha, WV.....	
Putnam, WV.....	
Charlotte-Gastonia-Rock Hill, NC-SC.....	.8424
Cabarrus, NC.....	
Gaston, NC.....	
Lincoln, NC.....	
Mecklenburg, NC.....	
Rowan, NC.....	
Union, NC.....	
York, SC.....	
Charlottesville, VA.....	.8822
Albermarle, VA.....	
Charlottesville City, VA.....	
Fluvanna, VA.....	
Greene, VA.....	
Chattanooga, TN-GA.....	.9165

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	.8959
Laramie, WY	
Chicago, IL	1.1211
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.1145
Butte, CA	
Cincinnati, OH-KY-IN	1.0319
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.7485
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.0826
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0047
El Paso, CO	
Columbia, MO	1.0378
Boone, MO	
Columbia, SC	.8450
Lexington, SC	
Richland, SC	
Columbus, GA-AL	.7406
Russell, AL	
Chattanooga, GA	
Muscogee, GA	
Columbus, OH	.9296
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.8801
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	.8798
Allegany, MD	
Mineral, WV	
Dallas, TX	.9565
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	.7621
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	.9739
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0107
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	.8545
Volusia, FL	
Decatur, IL	.8966

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Macon, IL	
Denver, CO	1.1934
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	.9824
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.0911
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.7892
Dale, AL	
Houston, AL	
Dubuque, IA	.9712
Dubuque, IA	
Duluth, MN-WI	.9477
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	.8903
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	.8849
El Paso, TX	
Elkhart-Goshen, IN	.9142
Elkhart, IN	
Elmira, NY	.9152
Chemung, NY	
Enid, OK	.9125
Garfield, OK	
Erie, PA	.9488
Erie, PA	
Eugene-Springfield, OR	1.0353
Lane, OR	
Evansville, IN-KY	.9963
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0031
Clay, MN	
Cass, ND	
Fayetteville, NC	.7983
Cumberland, NC	
Fayetteville-Springdale, AR	.7494
Washington, AR	
Flint, MI	1.1458
Genesee, MI	
Shiawassee, MI	
Florence, AL	.7255
Colbert, AL	
Lauderdale, AL	
Florence, SC	.7472
Florence, SC	
Fort Collins-Loveland, CO	1.0252
Larimer, CO	
Fort Lauderdale-Hollywood-Pompano	
Beach, FL	1.0424
Broward, FL	
Fort Myers-Cape Coral, FL	.8989
Lee, FL	
Fort Pierce, FL	1.0052
Marlin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.8726
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	.8210

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Okaloosa, FL	
Fort Wayne, IN	.9008
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	.9475
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0978
Fresno, CA	
Gadsden, AL	.8394
Etowah, AL	
Gainesville, FL	.8902
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.0782
Galveston, TX	
Gary-Hammond, IN	1.0415
Lake, IN	
Porter, IN	
Glens Falls, NY	.8889
Warren, NY	
Washington, NY	
Grand Forks, ND	.9462
Grand Forks, ND	
Grand Rapids, MI	1.0058
Kent, MI	
Ottawa, MI	
Great Falls, MT	.9966
Cascade, MT	
Greeley, CO	1.0174
Weld, CO	
Green Bay, WI	.9692
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.8710
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.8961
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.8869
Washington, MD	
Hamilton-Middletown, OH	.9649
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	.9907
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.0898
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.8335
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1343
Honolulu, HI	
Houma-Thibodaux, LA	.8083
Lafourche, LA	
Terrebonne, LA	
Houston, TX	.9868

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	.9066
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.8208
Madison, AL	
Indianapolis, IN	.9941
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.1630
Johnson, IA	
Jackson, MI	.9445
Jackson, MI	
Jackson, MS	.8439
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.7506
Madison, TN	
Jacksonville, FL	.8923
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	.7358
Onslow, NC	
Janesville-Beloit, WI	.8935
Rock, WI	
Jersey City, NJ	1.0599
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	.8446
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	.9060
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0507
Grundy, IL	
Will, IL	
Joplin, MO	.8649
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1352
Kalamazoo, MI	
Kankakee, IL	.8989
Kankakee, IL	
Kansas City, KS-MO	1.0064
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Kenosha, WI	1.0384
Kenosha, WI	
Killeen-Temple, TX	.9789
Bell, TX	
Coryell, TX	
Knoxville, TN	.8335
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokoma, IN	.9352
Howard, IN	
Tipton, IN	
LaCrosse, WI	.9629
LaCrosse, WI	
Lafayette, LA	.9261
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.8736
Tippecanoe, IN	
Lake Charles, LA	.9172
Calcasieu, LA	
Lake County, IL	1.0904
Lake, IL	
Lakeland-Winter Haven, FL	.8261
Polk, FL	
Lancaster, PA	.9866
Lancaster, PA	
Lansing-East Lansing, MI	1.0251
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	.7521
Webb, TX	
Las Cruces, NM	.8362
Dona Ana, NM	
Las Vegas, NV	1.0873
Clark, NV	
Lawrence, KS	.9748
Douglas, KS	
Lawton, OK	.8579
Comanche, OK	
Lewiston-Auburn, ME	.9034
Androscoggin, ME	
Lexington-Fayette, KY	.9227
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.9233
Allen, OH	
Auglaize, OH	
Lincoln, NE	.9287
Lancaster, NE	
Little Rock-North Little Rock, AR	.9376
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.8037
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	.9519
Lorain, OH	
Los Angeles-Long Beach, CA	1.2463
Los Angeles, CA	
Louisville, KY-IN	.9520
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Oldham, KY	
Shelby, KY	
Lubbock, TX	.9568
Lubbock, TX	
Lynchburg, VA	.8586
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	.8287
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0167
Dane, WI	
Manchester-Nashua, NH	.9222
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	.9116
Richland, OH	
Mayaguez, PR	.4842
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	.7655
Hidalgo, TX	
Medford, OR	.9701
Jackson, OR	
Melbourne-Titusville, FL	.8862
Brevard, FL	
Memphis, TX-AR-MS	.9644
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TX	
Merced, CA	1.0727
Merced, CA	
Miami-Hialeah, FL	1.0151
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	.9837
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0576
Midland, TX	
Milwaukee, WI	1.0435
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.1224
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.8319
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1049
Stanislaus, CA	
Monmouth-Ocean, NJ	.9365
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.8471
Ouachita, LA	
Montgomery, AL	.8173

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	.9565
Delaware, IN	
Muskegon, MI	.9620
Muskegon, MI	
Naples, FL	.9919
Collier, FL	
Nashville, TN	.8878
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TX	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.2359
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	.9352
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.0639
New Haven, CT	
New London-Norwich, CT	1.0562
New London, CT	
New Orleans, LA	.9080
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3092
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.0808
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.8492
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.9196
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4023
Alameda, CA	
Contra Costa, CA	
Ocala, FL	.8183
Marion, FL	
Odessa, TX	.8919
Ector, TX	
Oklahoma City, OK	1.0065

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0349
Thurston, WA	
Omaha, NE-IA	.9822
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	.8828
Orange, NY	
Orlando, FL	.9356
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	.8360
Daviess, KY	
Oxnard-Ventura, CA	1.2976
Ventura, CA	
Panama City, FL	.7882
Bay, FL	
Parkersburg-Marietta, WV-OH	.8828
Washington, OH	
Wood, WV	
Pascagoula, MS	.8929
Jackson, MS	
Pensacola, FL	.8241
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	.9879
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.0935
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0079
Maricopa, AZ	
Pine Bluff, AR	.7767
Jefferson, AR	
Pittsburgh, PA	1.0240
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	.9946
Berkshire, MA	
Ponce, PR	.5513
Juana Diaz, PR	
Ponce, PR	
Portland, ME	.9461
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1292
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	.9114
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	.9597
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	.9811

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	.9278
Utah, UT	
Pueblo, CO	.9920
Pueblo, CO	
Racine, WI	.9299
Racine, WI	
Raleigh-Durham, NC	.9274
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	.8702
Pennington, SD	
Reading, PA	.9381
Berks, PA	
Redding, CA	1.0779
Shasta, CA	
Reno, NV	1.1202
Washoe, NV	
Richland-Kennewick, WA	.9688
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	.8897
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.1536
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.8346
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0027
Olmstead, MN	
Rochester, NY	0.9558
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1.0245
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2140
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0597
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	.9662
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	.8811
Buchanan, MO	
St. Louis, MO-IL	1.0165
Clinton, IL	

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0416
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2211
Monterey, CA	
Salt Lake City-Ogden, UT	.9508
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.8302
Tom Green, TX	
San Antonio, TX	.8377
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.2350
San Diego, CA	
San Francisco, CA	1.4946
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4323
Santa Clara, CA	
San Juan, PR	.5387
Barcelona, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Lugaillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1428
Santa Barbara, CA	
Santa Cruz, CA	1.2017
Santa Cruz, CA	
Santa Fe, NM	.9362
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.2943
Sonoma, CA	
Sarasota, FL	.9166
Sarasota, FL	
Savannah, GA	.8405
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	.9318

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.0907
King, WA	
Snohomish, WA	
Sharon, PA	.9198
Mercer, PA	
Sheboygan, WI	.9318
Sheboygan, WI	
Sherman-Denison, TX	.8285
Grayson, TX	
Shreveport, LA	.8994
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	.9248
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	.9552
Minnehaha, SD	
South Bend-Mishawaka, IN	.9605
St. Joseph, IN	
Spokane, WA	1.0823
Spokane, WA	
Springfield, IL	1.0040
Menard, IL	
Sangamon, IL	
Springfield, MO	.9074
Christian, MO	
Greene, MO	
Springfield, MA	.9758
Hampden, MA	
Hampshire, MA	
State College, PA	1.0303
Centre, PA	
Steubenville-Weirton, OH-WV	.9106
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1743
San Joaquin, CA	
Syracuse, NY	.9730
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0325
Pierce, WA	
Tallahassee, FL	.8531
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	.9125
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	.8090
Clay, IN	
Vigo, IN	
Texarkana, TX-Texarkana, AR	.8071
Miller, AR	
Bowie, TX	
Toledo, OH	1.1101
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	.9955
Shawnee, KS	
Trenton, NJ	1.0014
Mercer, NJ	
Tucson, AZ	.9639
Pima, AZ	
Tulsa, OK	.9346

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	.9515
Tuscaloosa, AL	
Tyler, TX	.9326
Smith, TX	
Utica-Rome, NY	.8211
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2767
Napa, CA	
Solano, CA	
Vancouver, WA	1.0772
Clark, WA	
Victoria, TX	.7993
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9580
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.1418
Tulare, CA	
Waco, TX	.8585
McLennan, TX	
Washington, D.C.-MD-VA	1.1051
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria, City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9432
Black Hawk, IA	
Bremer, IA	
Wausau, WI	.9457
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	.9431
Palm Beach, FL	
Wheeling, WV-OH	.8761
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.0469
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	.8221
Wichita, TX	
Williamsport, PA	.8804
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0125
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.8602
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	.9460
Worcester, MA	
Yakima, WA	.9850
Yakima, WA	
York, PA	.9340
Adams, PA	
York, PA	
Youngstown-Warren, OH	.9942

TABLE A.—WAGE INDEX FOR URBAN
AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Mahoning, OH	.9970
Trumbull, OH	
Yuba City, CA	
Sutter, CA	
Yuba, CA	

TABLE B.—WAGE INDEX FOR RURAL
AREAS

Nonurban Area	Wage index
Alabama	0.7005
Alaska	1.3922
Arizona	.8869
Arkansas	.7124
California	1.0428
Colorado	.8666
Connecticut	1.0013
Delaware	.8236
Florida	.8223
Georgia	.7385

TABLE B.—WAGE INDEX FOR RURAL
AREAS—Continued

Nonurban Area	Wage index
Hawaii	.9318
Idaho	.8489
Illinois	.8188
Indiana	.8104
Iowa	.8070
Kansas	.7927
Kentucky	.7754
Louisiana	.7856
Maine	.8191
Maryland	.8112
Massachusetts	1.0033
Michigan	.9036
Minnesota	.8605
Mississippi	.7215
Missouri	.7640
Montana	.8558
Nebraska	.7751
Nevada	.9817
New Hampshire	.8784
New Jersey ¹	
New Mexico	.8359
New York	.8124
North Carolina	.7650
North Dakota	.8463

TABLE B.—WAGE INDEX FOR RURAL
AREAS—Continued

Nonurban Area	Wage index
Ohio	.8609
Oklahoma	.7938
Oregon	1.0029
Pennsylvania	.8807
Puerto Rico	.5536
Rhode Island ¹	
South Carolina	.7232
South Dakota	.7688
Tennessee	.7162
Texas	.7591
Utah	.8782
Vermont	.8387
Virginia	.7833
Virgin Islands ¹	
Washington	.9806
West Virginia	.8414
Wisconsin	.8458
Wyoming	.9100

¹ All counties within the State are classified urban.

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Federal Register

Thursday
August 18, 1988

Part V

Environmental Protection Agency

40 CFR Parts 141 and 142

Drinking Water Regulations; Maximum
Contaminant Level Goals and National
Primary Drinking Water Regulations for
Lead and Copper; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL-3380-2]

Drinking Water Regulations; Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper

August 3, 1988.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In this notice, EPA is proposing maximum contaminant level goals (MCLGs) and national primary drinking water regulations (NPDWRs) for controlling lead and copper in drinking water. These proposed regulations would control lead and copper in drinking water that is due both to their occurrence in source waters and to the corrosion of lead and copper plumbing materials by water. EPA is proposing an MCLG of zero for lead and an MCLG of 1.3 mg/l for copper. For both lead and copper, EPA is proposing an NPDWR consisting of a treatment technique requirement which would require optimal corrosion control to minimize lead and copper as corrosion by-products and public education to reduce exposure to lead as a corrosion by-product. In addition, EPA is proposing NPDWRs specifying maximum contaminant levels (MCLs) for lead and copper in water entering the distribution system, after any treatment: 0.005 mg/l for lead and 1.3 mg/l for copper. EPA is also soliciting comment on alternatives to some of these proposals related to treatment requirements, monitoring, and lead pipe replacement.

DATES: Written comments should be submitted by October 17, 1988. Public hearings will be held at the addresses indicated below under "ADDRESSES" on September 28 (and 29, if necessary), 1988 in Washington, DC; on October 3 (and 4, if necessary), 1988 in Chicago, IL; and on October 6 (and 7, if necessary), in Seattle, WA.

ADDRESSES: The Agency will hold public hearings on the proposal at three different locations indicated below:

1. GSA Regional Auditorium, Seventh and D Streets SW., Washington, DC 20407, September 28 (and 29, if necessary), 1988.
2. The Federal Building, Lake View Conference Center, 16th Floor, 230 S. Dearborn St., Chicago, IL 60604, October 3 (and 4, if necessary), 1988.

3. The Park Place Building, Room 12-A, 1200 Sixth Avenue, Seattle, WA 98101, October 6 (and 7, if necessary), 1988.

The hearings will begin at 9:30 a.m., with registration at 9:00 a.m. The hearings will end at 4:00 p.m., unless concluded earlier. Anyone wishing to make a statement at a hearing should notify, in writing, Lead Public Hearing Officer, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (301) 585-1597 (Juanita Bridgewater).

Oral and written statements may be submitted at the public hearing. Persons who wish to make oral presentations are encouraged to have written copies of their complete comments for inclusion in the official record.

The public docket for this rulemaking, including major supporting documents and public comments on the proposal, will be available for review and copying during normal business hours at the EPA Drinking Water Docket, 401 M Street SW., Washington, DC 20460. For access to docket materials, call (202) 382-3027 between 9 a.m. and 4 p.m. Eastern time.

Send written comments on the proposed rule to Lead and Copper Comment Clerk, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gregory Helms, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7575, or one of the EPA Regional Office contacts listed in "Supplementary Information," below. Information may also be obtained from the EPA Safe Drinking Water Hotline. The toll-free number is (800) 426-4791 and the Washington, DC number is (202) 382-5533. The hotline is open from 8:30 a.m. to 4:00 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: Major documents supporting this proposal will be available at EPA Regional Offices.

EPA Regional Offices

- I. JFK Federal Bldg., Room 2203, Boston, MA 02203, Phone: (617) 565-3610, Jerome Healey
- II. 26 Federal Plaza, Room 824, New York, NY 10278, Phone: (212) 264-1800, Walter Andrews
- III. 841 Chestnut Street, Philadelphia, PA 19107, Phone: (215) 597-9873, Jon Capacasa
- IV. 345 Courtland Street, Atlanta, GA 30365, Phone: (404) 347-2913, Wesley (Bo) Crum

- V. 230 S. Dearborn Street, Chicago, IL 60604, Phone: (312) 353-2151, Joseph Harrison

- VI. 1445 Ross Avenue, Dallas, TX 75202, Phone: (214) 655-7155, Thomas Love

- VII. 726 Minnesota Ave., Kansas City, KS 66101, Phone: (913) 236-2815, Gerald R. Foree

- VIII. 999 18th Street, Suite 500, Denver, CO 80202-2405, Phone: (303) 293-1424, Marc Alston

- IX. 215 Fremont Street, San Francisco, CA 94105, Phone: (415) 974-0763, William Thurston

- X. 1200 Sixth Avenue, Seattle, WA 98101, Phone: (206) 442-4092, Richard Thiel

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Glossary of Terms

Blood Lead Level or PbB Level: The concentration of lead in blood. The health effects of lead are indexed to the concentration of lead in the blood (rather than total exposure or intake), measured in micrograms of lead per deciliter of blood (ug/dl).

Corrosion: Dissolution or eroding of pipe or other plumbing material by water.

Distributed Water: Water leaving the water treatment facility and/or entering the distribution system.

Ends of The Distribution System: Those points in the water supply distribution system with low or no flow.

Fully Flushed Sample: Water collected from a tap that has been allowed to flow freely for 3–5 minutes.

Galvanic Corrosion: Corrosion of one metal accelerated by the presence of another metal with a different electrochemical potential (e.g., corrosion of lead solder is accelerated by the presence of copper pipe).

Gooseneck or Pigtail: A short section of pipe used to connect the service line to the water main or the service line to the water meter. See Figure 1.

Lead Pipe: Any pipe containing ≥ 8 percent lead.

Lead Solder: Any solder containing ≥ 0.2 percent lead.

Morning First Draw Sample: A water sample collected at a consumer's tap that has been standing in the interior plumbing for 8–18 hours and is collected without prior flushing.

Optimal Corrosion Control Treatment: Corrosion control treatment which minimizes lead levels in targeted samples.

Random Daytime Grab Sample: A water sample collected at a consumer's tap after it has been opened at a random time of the day (standing time of the water unknown).

Service Connection: The entire connection between a building and the service main, including the service line and any gooseneck or pigtail

connections between the service line and the main (See Figure 1).

Service Connection Sample: Water collected that has stood for 8–18 hours in a building service line. This sample may be collected by one of 3 methods: (1) Direct sampling of the service line; (2) tap sample collection based on a temperature change in the water; or (3) tap sample collection after flushing a volume of water equal to that contained in pipes leading from the tap to the service line.

Service Line: The section of pipe connecting the water main to the interior plumbing of a house or building. See Figure 1.

Targeted Samples: Samples which have been taken in accordance with the monitoring requirements to determine compliance with the treatment technique requirements for corrosion control.

Abbreviations

BAT: Best Available Technology
 CWSS: Community Water Supply Survey
 MCL: Maximum Contaminant Level
 MCLG: Maximum Contaminant Level Goal
 MDL: Method Detection Limit
 MGD: Million Gallons per Day
 NIRS: National Inorganics and Radionuclide Survey
 NOMS: National Organics Monitoring Survey
 NPDWR: National Primary Drinking Water Regulation
 NSDWR: National Secondary Drinking Water Regulation
 NTNCWS: Non-Transient Non-Community (Water System)
 PQL: Practical Quantitation Limit
 PWS: Public Water System
 SDWA: Safe Drinking Water Act
 VOC: Volatile Organic Chemical

I. Statutory Requirements

The Safe Drinking Water Act (42 U.S.C. 300f *et seq.*) ("SDWA" or "the Act") requires EPA to establish maximum contaminant level goals (MCLGs) and national primary drinking water regulations (NPDWRs) for contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons and which are known or anticipated to occur in public water systems. Section 1412(b)(3)(A). MCLGs and MCLs are to be proposed and promulgated simultaneously. Section 1412(b)(1).

MCLGs are Non-enforceable Health Goals

MCLGs are to be set at a level at which, in the Administrator's judgment,

"no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety." Section 1412(b)(4). The House Report on the bill that eventually became the SDWA of 1974 provides Congressional guidance on developing MCLGs:

[T]he recommended maximum contaminant level [renamed maximum contaminant level goal in the 1986 amendments to the SDWA] must be set to prevent the occurrence of any known or anticipated adverse effect. It must include an adequate margin of safety, unless there is no safe threshold for a contaminant. In such a case, the recommended maximum contaminant level should be set at the zero level. (H.R. Rep. No. 93-1185, Pg. 20, 1974)

NPDWRs Set the Enforceable Standards

NPDWRs include either MCLs or treatment technique requirements as well as compliance monitoring requirements. Section 1401(1). A treatment technique requirement can be set only if "it is not economically or technologically feasible to ascertain the level of the contaminant." Section 1412(b)(7)(A). The MCL for a contaminant must be set as close to the MCLG as is "feasible." Section 1412(b)(4). Feasible means "feasible with the use of the best technology, treatment techniques and other means, which the Administrator finds after examination for efficacy under field conditions and not solely under laboratory conditions are available (taking costs into consideration)." Section 1412(b)(5). A treatment technique must "prevent known or anticipated adverse effects on the health of persons to the extent feasible." Section 1412(b)(7)(A).

Secondary MCLs

EPA sets national secondary drinking water regulations (NSDWRs) to control water color, odor, appearance, and other characteristics affecting consumer acceptance of water. The secondary regulations are not federally enforceable, but are considered guidelines for the States. Section 1401(2).

Amendments to the SDWA

The 1986 amendments to the SDWA established a list of 83 contaminants for which EPA is to develop MCLGs and NPDWRs. Lead and copper are among these contaminants, and this proposed rule is the first step in fulfilling this statutory requirement for lead and copper in drinking water.

II. Background

A. Regulatory Background

The current MCL for lead is 0.050 mg/l (see 40 CFR 141.11(b)). EPA promulgated

this MCL as an interim drinking water regulation in 1975. For copper, there is currently a NSDWR of 1 mg/l. On November 13, 1985, EPA began the process of revising the standards for lead and copper by proposing MCLGs for them (50 FR 46936, November 13, 1985). Because the 1986 amendments to the SDWA require that MCLGs and NPDWRs be proposed and promulgated simultaneously, EPA must repropose MCLGs for contaminants for which MCLGs were originally proposed in the November 1985 notice, including lead and copper, when it proposes the corresponding NPDWRs. Accordingly, this notice, which proposes NPDWRs for lead and copper, also repropose MCLGs for these contaminants. The MCLG proposed for lead in this notice (zero) is lower than the MCLG for lead proposed in November 1985. The MCLG proposed for copper is the same as that proposed in 1985 (1.3 mg/l).

1. Lead

The November 1985 notice proposed an MCLG for lead of 0.020 mg/l. This goal was based on an assessment of data on adverse health effects of lead on infants. The assessment concluded that blood lead levels of 15 to 20 ug/dl represented levels of concern for infants. Effects of lead found at these levels are discussed in detail in the November 1985 notice; more recent data on these and other effects are discussed below. The 1985 proposed MCLG of 0.020 mg/l for lead in water assumed that 15 ug/dl was the blood lead level of concern for infants, assumed that infants receive 100 percent of their lead exposure from drinking water, and used a factor of 0.16 ug/dl per ug/l lead to correlate water lead levels to blood lead levels (i.e., every 1 ug/l lead in drinking water was estimated to contribute about 0.16 ug/dl to a child's blood lead level). An uncertainty factor of 5 was used in the calculation to account for uncertainty in the data and provide a margin of safety.

There also are several positive carcinogenicity bioassays using different lead salts. Therefore, in the November 1985 notice, EPA classified lead as a Group B2 carcinogen (probable human carcinogen) according to the draft EPA Guidelines for Carcinogen Risk Assessment (since promulgated as final guidelines at 51 FR 33992, September 24, 1986). However, the proposed MCLG was not based on the carcinogenicity data because the doses used in the studies were much higher than the overt toxicity levels in humans, and because several epidemiology studies did not show an association

between cancer and lead exposure in occupationally exposed workers.

In addition to directing EPA to revise the NPDWR for lead, the SDWA includes other provisions that affect lead contamination of drinking water. The 1986 SDWA amendments banned the use of lead solder or flux (i.e., solder or flux containing more than 0.2 percent lead) and lead-bearing pipes and fittings (i.e., pipes and fittings containing more than 8 percent lead). Section 1417. The lead ban was effective June 19, 1986. States were required to implement and enforce the lead ban as of June 19, 1988. EPA is developing a program to withhold 5 percent of Federal grants for drinking water implementation from States that fail to enforce the ban.

The SDWA also imposes special public notification requirements regarding lead in drinking water. Section 1417(a)(2). Public water systems are required to identify and provide notice to persons who may be affected by lead contamination in their drinking water, when such contamination results from either the use of lead in the construction materials of the system and/or corrosivity of the water supply sufficient to cause lead leaching from plumbing systems. This provision requires notification even if the system is in compliance with the current MCL for lead. EPA published final regulations to implement this requirement of the SDWA on October 28, 1987 (52 FR 41534). Under these regulations, systems were required to begin providing notice to consumers by June 19, 1988.

2. Copper

EPA proposed an MCLG of 1.3 mg/l for copper in the November 13, 1985 notice. This value was based on short-term effects of copper on humans at relatively high doses; no long-term effects at lower exposure levels have been predicted. No new data have become available since November 1985 that have altered EPA's evaluation of the health effects of copper.

B. Overview of Problem

1. Lead

Lead occurs in drinking water from two sources: (1) Lead in raw water supplies, i.e., source water, and (2) corrosion of plumbing materials in the water distribution system. Most of the lead in drinking water is a result of corrosion by water of plumbing materials containing lead.

EPA estimates that approximately 900 public water systems (or <1 percent of the community water systems in the country) may have water leaving the

water supply plant that has greater than 0.005 mg/l lead. In fact, some systems deliver water to customers that exceeds the current MCL of 0.050 mg/l. Because of concern about low level exposures to lead, as described in Section III.B.1. below, lead in source water even at low levels may be an important contributor to lead in drinking water in some systems.

Lead in drinking water as a by-product of corrosion results primarily from corrosion of plumbing materials in

the distribution system and in buildings. The amount of lead in drinking water due to corrosion depends on a number of factors, including the amount and age of lead material present in the system to be corroded and the degree of corrosivity of the water.

As illustrated in Figure 1, potential sources of lead in drinking water distribution systems (including plumbing in buildings) include:

- Water service mains (rarely);

- Lead goosenecks or pigtails (short sections of pipe leading from the water main to the meter or main portion of the service line, and which is generally 6-8 feet long);

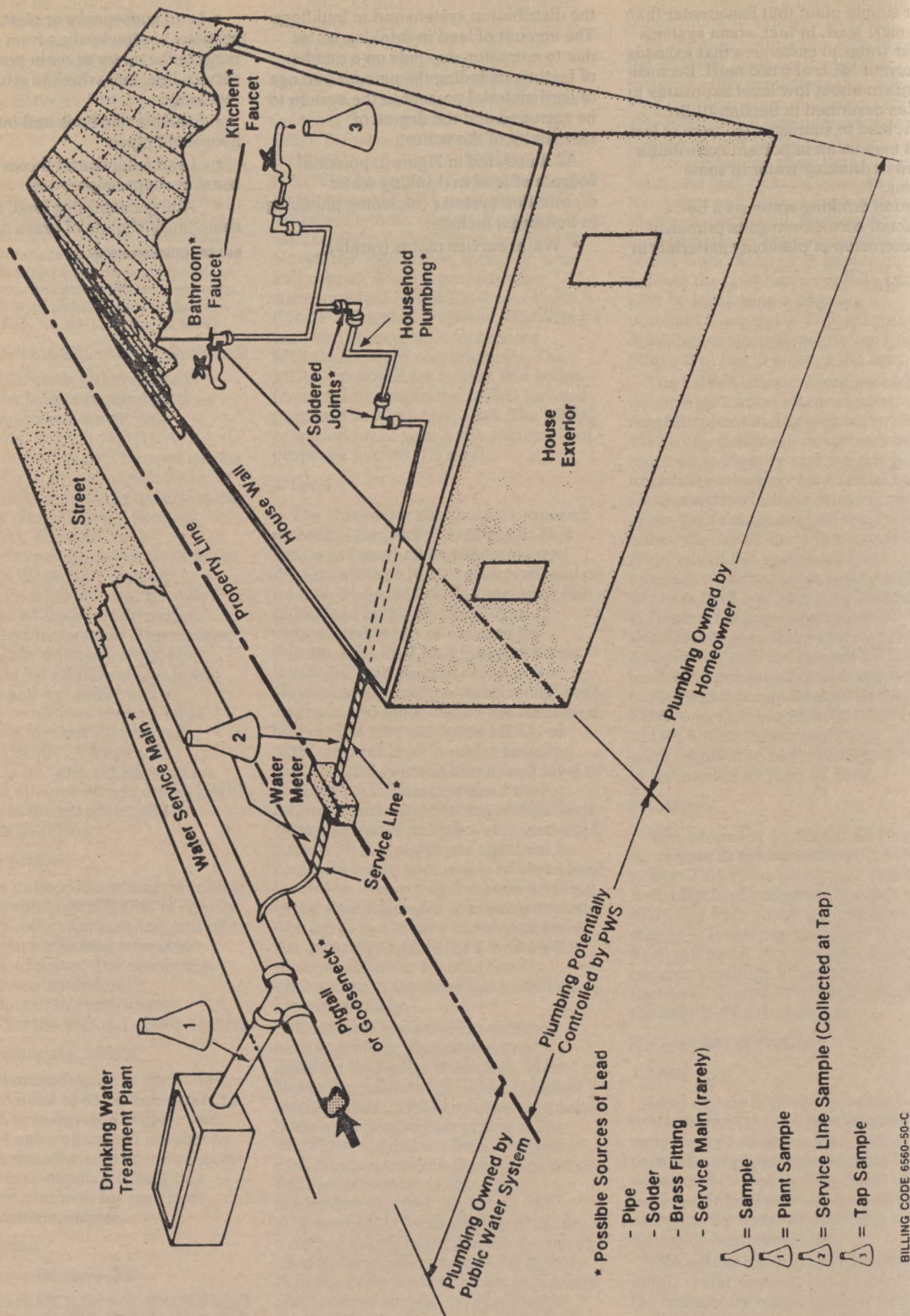
- Lead service lines and interior household pipes;

- Lead solders and fluxes used to connect copper pipes; and

- Alloys containing lead, including some faucets made of brass or bronze.

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Figure 1
Public Water System and Homeowner Plumbing



Most public water systems serve at least some buildings with lead solder and EPA estimates that there are about 4.4 million lead service lines still in use in the U.S. About 25 percent of water suppliers have some lead service lines within their distribution system (EPA, 1987a). Lead service lines and interior plumbing are significant potential sources of lead in drinking water and can contribute large amounts of lead to water for the life of the pipe. Lead solder can contribute large amounts of lead to water for up to five years after installation, and longer if exposed to corrosive water (EPA 1986a). In addition, brass and bronze in faucets and fixtures can contain lead and there is evidence that they can be an important source of lead in drinking water that stands in the fixtures.

The amount of lead in drinking water also depends on the corrosivity of the water. All water is corrosive to metal plumbing materials to some degree, even water termed non-corrosive or water treated to make it less corrosive. The corrosivity of water to lead is influenced largely by the pH and total alkalinity of the water (water with low pH and/or low alkalinity water is more corrosive to lead than water with high pH and alkalinity). Galvanic corrosion of lead into water also occurs with lead-soldered copper pipes, due to differences in the electrochemical potential of the two metals. Grounding of household electrical systems to plumbing can exacerbate galvanic corrosion. There are other factors that also may affect water corrosivity, such as water temperature (seasonal variations in lead levels are common), and levels of free chlorine, total dissolved solids, and oxygen.

Lead levels in drinking water can vary considerably from system to system, among houses supplied by the same system, among different taps in the same house, and at different times of the day at a single tap. Factors that affect lead levels in water independent of the corrosivity of water include:

- The number and age of lead-soldered joints in the building and the quality of workmanship of the joints (new solder releases high amounts of lead and sloppy solder joints have more lead available to be leached);

- The contact time between the water and the lead (longer contact time results in higher lead levels so, for instance, morning first draw water samples have higher lead levels than samples with shorter standing times or flushed water samples); and

- The length and diameter of the lead service line (longer lines generally result in higher lead levels in water at the tap

since the water is in contact with more lead, while smaller diameter pipes have a greater ratio of pipe surface to water volume so there is more contact between the lead and water which can result in higher lead levels, and small diameter pipes can also result in higher lead levels because of increased velocity of the water flow which causes scouring of the sides of the pipe).

2. Copper

The primary source of copper in drinking water is corrosion of copper pipes, which are widely used throughout the U.S. for interior plumbing of residences and other buildings; copper in source water is a problem for very few water supplies. In some cases, copper is a component of additives to drinking water used by suppliers to control the growth of algae. EPA estimates that only 66 water suppliers would need to install treatment to reduce copper in source water to the MCLG (EPA, 1988a).

Like lead in drinking water, the occurrence of copper in drinking water resulting from corrosion when copper is present in the distribution system, including interior plumbing, depends on the corrosivity of the water. Also, as with lead, all water is corrosive to copper to some degree. Corrosivity toward copper depends primarily on the pH of the water, with very low pHs associated with the highest levels of copper in water due to corrosion. Free chlorine levels also affect corrosion of copper; higher chlorine residual levels increase copper corrosion (Stone et al., 1987; Reiber et al., 1987; EPA, 1987b). Dissolved carbon dioxide and oxygen can also contribute to copper corrosion (Cohen and Meyers, 1987).

Many of the other factors that affect the corrosivity of water towards lead can also be expected to affect the corrosion of copper. For instance, flow rate, standing time, water temperature, and length of copper pipe can affect copper levels in drinking water (Maessen et al., 1985). There are few data on whether age of plumbing affects copper corrosion rates (EPA, 1987b; Reiber et al., 1987).

III. MCLGs for Lead and Copper

A. Exposure

1. Exposure to Lead

a. *General.* Assessing actual human exposure to lead is difficult due to the variability of lead levels at the tap and the existence of other exposure sources. As described above, water lead levels at any one tap vary throughout the day, and vary among taps with constant standing times due to differences in the

amount of available lead to which the water is exposed.

People are exposed to lead from a variety of sources in addition to water, including food, air, and dust; the proportion of total exposure attributable to drinking water varies by individual. The typical drinking water contribution to total lead exposure for an average two-year-old child is estimated to be about 20 percent (EPA, 1988b), but this varies with different levels of lead in the water and with variations in other lead exposures, and can range from about five to 30 percent of total intake. For children with extraordinary exposures, such as those exposed to deteriorating lead paint, including paint chips or leaded-paint dust, or living near lead smelters or other point sources of airborne lead, those sources predominate and drinking water contributes a much lower, although still relevant, proportion of total exposure. For residents of buildings with new lead solder served with corrosive water, drinking water can be the primary source of exposure.

b. *Exposure to Lead Through Drinking Water.* The magnitude of human exposure resulting from the ingestion of lead in drinking water depends upon many factors. Patterns of consumption may vary among individuals, from those who flush taps before drinking to those who drink first flush water. There are few actual data on individual water consumption patterns (i.e., percent consumption of standing and flushed water) and the lead exposures that result from them. EPA is conducting a pilot study of drinking water consumption patterns which may provide additional data on this question for use in developing the final MCLG and enforceable standards. However, these data are not yet available.

The problem of assessing exposure from drinking water can be addressed by bracketing exposures. Assuming that an adult consumes two liters of water (one liter for children) per day from the same water supplier, morning first draw samples (or service connection samples if the service connection is lead) will represent a case of high exposure and fully flushed samples will represent the minimum exposure. For example, in a home where fully flushed samples are consistently 0.005 mg/l and morning first draw (or service connection) samples are consistently 0.010 mg/l, the occupants will have actual lead intake from drinking water of 0.005–0.010 mg/l, or a total of 0.010–0.020 mg/day for adults.

Patterson (EPA, 1981) conducted a national study of lead levels in drinking

water. Random daytime grab samples from taps that had been flushed for 30 seconds were collected from 580 cities in 47 states. While 30-second flushed random grab samples are not necessarily representative of actual human exposure, EPA believes that they are more representative of water consumed in the U.S. than are fully flushed samples since many people regularly consume some morning first draw water. Because these data portray neither an upper bound of exposure (morning first draw or lead service line sample levels) nor a lower bound of exposure (fully flushed) levels, they may more closely portray actual average exposure. Therefore, these data provide insight as to the magnitude of lead exposure via drinking water. In the Patterson study, which used a reporting limit of 0.010 mg/l, the national mean lead level in water was 0.029 mg/l. The midwest had the highest mean lead level (0.047 mg/l) and the south-central portion of the country had the lowest mean lead level (0.012 mg/l). The median value for the U.S. and for all of the regions of the country identified in the analysis was the reporting limit, 0.010 mg/l. An EPA analysis of the benefits of regulating lead in drinking water used these data to estimate that 42 million people in the U.S. may be exposed to lead levels in water of 0.020 mg/l or greater (EPA, 1986a).

As discussed in Section III.B. below, the toxic effects of lead are correlated with blood lead levels rather than lead exposure levels or intake amounts. Therefore, it is important to understand the relationship between lead intake and blood lead levels. Many investigators have attempted to correlate blood lead levels with drinking water lead levels and estimate the contribution of water lead to blood lead levels. Several of these studies correlated morning first draw water lead levels with blood lead levels (U.K. Dept. of Environment, 1982; Thomas et al., 1979). Other studies correlate standing random daytime grab sample water lead levels with blood lead levels (Worth et al., 1981; Moore, 1977). While neither morning first draw nor standing random daytime grab data is a better predictor of blood lead level than the other, of the currently available data, both are better than fully flushed samples (EPA, 1986b). Duplicate diet studies by Ryu (1983) and Lacey et al. (1985) have correlated measured lead intake with blood lead levels, and can also be used to predict blood lead levels. EPA has used a correlation coefficient of 0.20 ug/dl per ug/l derived from these last two studies

to relate lead levels in drinking water to blood lead levels (EPA, 1988c).

c. Non-Drinking Water Exposures to Lead. There are several sources of lead exposure in addition to drinking water. Directly inhaled airborne lead and lead that settles out to dust and dirt from the air are important sources, especially for children who tend to play in the dirt and who often put their hands in their mouths. Other important sources of lead are air deposition on food crops, leaching to food from lead soldered cans, and in the case of exceptionally high exposures, lead paint.

Lead in air arises from industrial emissions and combustion of leaded gasoline in cars. EPA estimates that average urban air lead levels ranged between 0.2–0.4 ug/m³ in 1986 (EPA, 1988d). Much higher levels are found in areas near stationary lead sources such as smelters and battery plants.

Ingestion of leaded paint chips and dust accounts for most of the reported cases of overt lead poisoning in children. Many local community health programs (especially in urban areas) screen the blood lead levels of children and identify high risk housing (i.e., those houses likely to have deteriorating lead paint) and assist with remediation of lead paint problems.

Food is also a source of lead exposure. Lead can contaminate food by uptake from soil, direct deposition on crops from the air, or use of lead solder to seal cans (especially with acidic foods such as tomatoes). The Food and Drug Administration has recommended the use of non-lead soldered cans for baby foods and encourages food processors to eliminate the use of lead-soldered cans for all foods. In the U.S., no baby foods are currently sold in lead-soldered cans and most domestic can manufacturers have voluntarily converted to lead-free cans for other foods as well. In addition, lead can contaminate food in the handling, transportation or preparation stages. Finally, food prepared with water, either in manufacturing or at home, can be contaminated by lead from the drinking water.

The Agency for Toxic Substances and Disease Registry (ATSDR) has compiled a report to Congress on lead hazards and exposures of children (ATSDR, 1988). The ATSDR report reviews the non-drinking water sources of lead exposure in greater detail than is presented here.

2. Exposure to Copper

Human exposure to copper results from a variety of sources, including drinking water. As described earlier,

copper in drinking water occurs primarily as a result of the corrosion of copper plumbing pipes, although some copper occurs in raw water.

Patterson (EPA, 1981) measured copper levels in the 30-second flushed random daytime grab samples described above. In that survey, 3 percent of 772 samples exceeded 1 mg/l of copper and 19 percent exceeded 0.2 mg/l. The national average level of copper in water was 0.221 mg/l (median 0.04 mg/l), the south central U.S. had the lowest average levels (0.082, median, 0.02 mg/l), and the northeast had the highest average levels (0.526 mg/l; median, 0.06 mg/l).

Exposure to copper can also come through air and food. In a 1966 National Air Sampling Network survey, copper levels in the air were 0.01 and 0.26 µg/m³ in rural and urban areas, respectively (U.S. Dept. of Health, Education, and Welfare, 1968). Airborne copper levels near copper smelters can range up to 2 µg/m³, but even these high levels contribute only about 1 percent of normal daily intake. Copper is found in shellfish and organ meats, nuts, and dried legumes; dried vine and stone fruits and cocoa are especially rich in copper. Copper levels can range up to 400 µg/g in these foods (50 FR 46967, Nov. 13, 1985).

B. Toxicity

1. Health Effects of Lead

As noted above, the health effects of lead are generally correlated with PbB levels. Lead exposure across a broad range of blood lead (PbB) levels is associated with a continuum of pathophysiological effects, including interference with heme synthesis necessary for formation of red blood cells, anemia, kidney damage, impaired reproductive function, interference with vitamin D metabolism, impaired cognitive performance (as measured by IQ tests, performance in school, and other means), delayed neurological and physical development, and elevations in blood pressure (EPA, 1986b).

At this time, it is difficult to identify clearly what PbB level is an appropriate criterion or "threshold" below which there are no or only minimal risks of adverse health effects. Although there is some uncertainty regarding the point at which subtle biochemical or other changes combine to cause a discernable adverse effect on organs or systems in the body, effects clearly become more pronounced and broaden to cause more severe disruptions of the normal functioning of many organ systems as PbB levels increase. The following

considerations are important in determining a target PbB of concern to be used in setting an MCLG.

PbB levels above 30 $\mu\text{g}/\text{dl}$ in young children are associated with clearly deleterious effects in several organ systems (EPA, 1986b). These include reduced hemoglobin synthesis (at 40 $\mu\text{g}/\text{dl}$), frank anemia (at 70 $\mu\text{g}/\text{dl}$), peripheral neuropathies (at 60 $\mu\text{g}/\text{dl}$), encephalopathy (at 80–100 $\mu\text{g}/\text{dl}$), and in some cases, death.

At levels below 25–30 $\mu\text{g}/\text{dl}$, many different, less obvious effects indicate interference by lead with normal physiological processes. The onset of signs of detectable heme synthesis impairment in many different organ systems occurs at PbB levels starting around 10–15 $\mu\text{g}/\text{dl}$, along with indications of pyrimidine and vitamin D metabolism interference and signs of altered nervous system activity (EPA, 1986b).

Evidence also indicated that fetal exposure at PbB levels around 10–15 $\mu\text{g}/\text{dl}$ is associated with delays in early mental and physical development (EPA, 1986b; Davis and Svendsgaard, 1987).

In adults, several studies have found a small but consistent relationship between blood lead levels and blood pressure, with some indications of a continuous relationship down to the lowest levels measured. The blood pressure increases may be associated with some increased risk for more serious cardiovascular disease events, especially if PbB levels are chronically elevated (EPA, 1986a).

Some of the important effects of low-level lead exposures are:

1. Inhibition of pyrimidine-5-nucleotidase (Py-5-N) and delta-aminolevulinic acid dehydrase (ALA-D) activity, which appears to begin at a PbB level of 10 $\mu\text{g}/\text{dl}$ or below (Angle et al., 1982). Hernberg and Nikkanen (1970) found 50 percent inhibition of ALA-D activity at PbB levels above 16 $\mu\text{g}/\text{dl}$. Inhibition of erythrocyte ALA-D appears to occur at virtually all blood lead levels measured so far, with no evident threshold (EPA, 1986b). Inhibition of ALA-D activity is manifested in increased levels of aminolevulinic acid (ALA) in blood and soft tissue, which appear to occur at PbB levels of about 40 $\mu\text{g}/\text{dl}$ (O'Flaherty et al., 1980) and may occur at levels as low as 18 $\mu\text{g}/\text{dl}$ (Meredith et al., 1978). Several studies indicate that increases of ALA in the brain interfere with the gamma-aminobutyric acid (GABA) neurotransmitter system in various ways (EPA, 1986b).

2. Elevated levels of erythrocyte protoporphyrin (EP) in red blood cells occurs at PbB levels as low as 15 $\mu\text{g}/\text{dl}$.

This probably indicates a general interference in heme synthesis throughout the body, including interference in the functioning of mitochondria (Piomelli et al., 1980). Changes in heme metabolism have been reported perinatally at blood lead levels of 8–10 $\mu\text{g}/\text{dl}$ (Lauwerys et al., 1978). Some studies that accounted for iron status show that children with low iron stores are more sensitive to lead in terms of heme biosynthesis interference (e.g., Mahaffey and Annett, 1986).

3. Interference with vitamin D metabolism has been associated with lead exposure with no apparent threshold down to the lowest PbB level measured (12 $\mu\text{g}/\text{dl}$) in studies by Rosen et al. (1980) and Mahaffey et al. (1982).

4. Correlations between lead exposure and changes in electrophysiological functioning of the nervous system have also been reported. These include correlations with: Changes in slow-wave electroencephalogram (EEG) patterns, increased latencies in brainstem auditory evoked potentials (Otto et al., 1981, 1982, 1985), and slowed nerve conduction in the auditory pathway associated with PbB levels with no clearly discernable threshold apparent down to 6 $\mu\text{g}/\text{dl}$ (Schwartz and Otto, 1987). Also, peripheral nerve conduction velocities have been shown to be slowed in children, with significant correlation at PbB levels above 20 $\mu\text{g}/\text{dl}$ (Landrigan et al., 1976; Schwartz et al., 1988).

5. As stated in recent reviews (Davis and Svendsgaard, 1987; EPA, 1986b), evidence from longitudinal studies in several different communities consistently indicates that perinatal exposure to blood lead levels as low as 10–15 $\mu\text{g}/\text{dl}$, and possibly lower, is linked to delays in early cognitive and physical development. Four independent studies show an association between maternal or cord blood lead levels at birth and reduced performance on a standard index of infant mental development through two years of age (e.g., Bellinger et al., 1984, 1987; Dietrich et al., 1987; Baghurst et al., 1987; Wolf et al., 1985). In addition, birth weight and the length of gestation appear to be reduced in prenatally lead-exposed infants in some of these studies (e.g., Dietrich et al., 1987; Bornschein et al., 1988; McMichael et al., 1986). Analyses also suggest that growth and stature are reduced in older children with PbB levels ranging from 5 to 35 $\mu\text{g}/\text{dl}$ (Schwartz et al., 1986), with supporting evidence from other studies of children at higher PbB levels (Lauwerys et al., 1986) and of experimental animals (Grant et al., 1980). Other aspects of physical development may also be

disturbed by prenatal lead exposure (Davis and Svendsgaard, 1987; EPA, 1986b).

6. Recent studies of IQ effects in black children of uniformly low socioeconomic status (SES), so that SES was not a confounder, have shown a highly significant association between IQ and blood lead across a range of 6 to 47 $\mu\text{g}/\text{dl}$ (Schroeder et al., 1985; Schroeder and Hawk, 1987). Other recent cross sectional studies also provide consistent evidence of IQ deficits in children at PbB levels below 25 $\mu\text{g}/\text{dl}$ (Fulton et al., 1987; Hatzakis et al., 1987).

Finally, based on the weight of evidence, EPA has classified lead as a probable human carcinogen (Group B2), because some lead compounds cause real tumors in experimental animals (EPA, 1988e). EPA (1986b) noted that lead may act as a promoter or initiator of carcinogenesis and that *in vitro* studies support the genotoxic and carcinogenic role of lead. However, EPA recommends that quantitative estimates of the carcinogenic potency of lead not be used for the purpose of risk assessment, because of the considerable uncertainty in the estimates. As EPA has stated previously, "lead has been observed to increase tumorigenesis rates in animals only at relatively high concentrations, and therefore it does not appear to be a potent carcinogen." (EPA, 1986b). At low levels, the non-cancer effects of lead are of greatest concern for regulatory purposes.

In reviewing the information presented in the Agency's 1986 Air Quality Criteria Document, EPA's Clean Air Science Advisory Committee concluded that the various effects starting at PbB levels around 10–15 $\mu\text{g}/\text{dl}$ or even lower in young children "may be argued as becoming biomedically adverse" (EPA, 1986c).

Although no threshold is apparent for various measures of lead toxicity, some distinction can be made between PbB levels where risks of effects appear more likely (10–15 $\mu\text{g}/\text{dl}$ and higher) and levels where risks are less certain (below 10–15 $\mu\text{g}/\text{dl}$). Therefore, 10–15 $\mu\text{g}/\text{dl}$ constitutes an appropriate range of concern for health effects that warrant avoidance.

2. Health Effects of Copper

The health effects of copper were discussed in detail in EPA's 1985 MCLG proposal (50 FR 46967, November 13, 1985). No new relevant information on the health effects of copper that alters the conclusions reached in that notice has become available. The information presented in the November 1985 notice is summarized here.

Copper is toxic to humans at high levels and is nutritionally essential at lower doses. Acute exposure to high copper levels in test animals and humans can cause gastrointestinal disturbances, liver damage, renal damage, hemolytic anemia, and glucose-6-phosphate dehydrogenase (G6PD) inhibition. Chronic toxicity data are limited.

Two groups are at increased risk from copper exposure. Individuals with Wilson's disease, an inborn error in copper metabolism, are at higher risk than the general public. The metabolic error in Wilson's disease allows copper to accumulate in the liver, brain, kidney, and cornea, causing hemolytic anemia, neurological abnormalities, and corneal opacity. In addition, individuals with existing G6PD deficiencies may also be at greater risk of experiencing toxic effects from copper exposure.

On the other hand, copper is regarded as nutritionally essential because it is required in many enzymatic reactions in mammals. Copper deficiency can result in decreased iron absorption and iron deficiency, and may also lead to reproductive abnormalities. The National Academy of Sciences has recommended 2-3 mg/day copper as a safe and adequate intake (NAS, 1980).

Copper is classified in EPA's Group D (insufficient data) for carcinogenic potential. Copper is generally negative in mutagenicity bioassays and copper produced equivocal results in carcinogenicity bioassays. Bioassays using oral copper were negative; subcutaneous injection of copper compounds has been reported to induce tumor formation in one sex and strain of mice.

C. Development of the MCLGs

1. MCLG for Lead

EPA is proposing to set the MCLG for lead at zero, based on subtle effects at low blood lead levels, the overall Agency goal of reducing total lead exposures, and probable carcinogenicity at very high doses. Specifically, the basis for proposing the MCLG at zero is:

1. The occurrence of a variety of low level effects for which it is currently difficult to identify clear threshold PbB levels below which there are no risks of adverse health effects;

2. The Agency policy goal that drinking water should contribute minimal lead to total lead exposures because a substantial portion of the sensitive population already exceeds acceptable blood lead levels; and

3. The classification of lead as a Group B2 (probable human) carcinogen.

As discussed above, effects of concern have been associated with blood lead levels beginning at 10-15 ug/dl in adults, children, and fetuses. Below 10 ug/dl, biochemical and other cellular level effects of questionable health significance have been reported. Therefore, for purposes of this regulation, EPA considers 10-15 ug/dl to be an appropriate range of concern for health effects that warrant avoidance.

Lead affects a wide range of organ systems; it can adversely affect the blood, the nervous system, normal growth and development, the kidneys, the reproductive system, and the cardiovascular system. An MCLG of zero is appropriate because there are no clearly discernable thresholds for some of these effects.

Another reason for setting the MCLG at zero is the fact that a portion of the population most sensitive to lead effects already has blood lead levels above the levels that pose a risk of causing some adverse effects. Although average blood lead levels are expected to be near 4-6 ug/dl in children in 1990 when this rule would take effect (EPA, 1988f), many individual children would still have PbB levels above 10 ug/dl (excluding children with lead paint/pica exposures, whose exposure from those sources overwhelms exposure from other sources), the lower bound of the range of concern. Because many children now have blood lead levels above the level of concern, EPA's policy goal is that drinking water contribute minimal additional lead to existing body burdens of lead.

Finally, EPA reviewed data on lead's potential carcinogenicity in determining the appropriate MCLG. Although difficulties in evaluating the dose-response data for lead prevent estimation of its carcinogenic potency, the data nonetheless clearly indicate that lead is carcinogenic in test animals. As explained by EPA in adopting MCLGs for other carcinogenic contaminants, the Agency does not believe that a threshold exists for carcinogenic effects (50 FR 46894, November 13, 1985). EPA therefore believes that, for carcinogens, zero is the level at which no known or anticipated effects occur with an adequate margin of safety, and EPA has established a policy of setting MCLGs at zero for compounds classified as Group A or B carcinogens. Setting the MCLG for lead at zero is consistent with that policy.

EPA has received a request from Multinational Business Services, Inc. ("MBS") to reconsider the Agency's policy of establishing MCLGs of zero for carcinogens and instead establish MCLGs for carcinogenic contaminants

at calculated negligible risk levels. EPA considered adopting finite, risk-based MCLGs when it promulgated MCLGs for five carcinogenic volatile organic chemicals in (VOCs) 1985. EPA decided that, given the nonthreshold nature of carcinogenic effects, the zero MCLG option best fulfilled the mandate of the SDWA to establish MCLGs "at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety." See 49 FR 24347-24348 (June 12, 1984) and 50 FR 46895-46896 (November 13, 1985). The Agency's decision to set MCLGs of zero for these five contaminants was upheld in *Natural Resources Defense Council v. Thomas*, 824 F.2d 1211 (D.C. Cir., 1987).

In its request, MBS contends that the recent decision by the U.S. Court of Appeals for the District of Columbia Circuit in *Natural Resources Defense Council v. EPA*, 824 F.2d 1146 (1987) ("*Vinyl Chloride*"), which construed the Agency's duties under section 112 of the Clean Air Act, applies to the establishment of MCLGs under the SDWA.

The Agency does not believe that the court's analysis in *Vinyl Chloride* must be applied to the setting of MCLGs. That decision construed the specific language of section 112 of the Clean Air Act and the legislative history of that provision. Section 1412 of the SDWA differs from section 112 of the Clean Air Act both in terms of its language and legislative history. Furthermore, the role of the MCLG as a non-enforceable health goal, the first step in the process of determining the enforceable MCL or treatment technique, is unique to the SDWA. In light of the distinctions between section 112 of the Clean Air Act and section 1412 of the SDWA, the Agency does not believe that following the *Vinyl Chloride* analysis in setting MCLGs is either necessary or appropriate. For these reasons, and the reasons described in the VOC rulemaking, EPA believes at this time that it is appropriate to set MCLGs for nonthreshold contaminants at zero. Nonetheless, the Agency has included the request submitted by Multinational Business Services in the record for this rulemaking, and the Agency intends to fully address that submission and any related comments when the Agency publishes the final MCLG for lead.

Public Comments: In 1985, a total of eight individuals and organizations commented on the proposed MCLG of 0.02 mg/l for lead. The public comments and EPA's responses are summarized below:

Comment Summary: Some commenters stated that the proposed MCLG of 0.02 mg/l for lead was appropriate. There was some disagreement among the commenters on whether an uncertainty factor of 5 or 10 (which would yield an MCLG of 0.01 mg/l) should be used.

EPA Response: For the reasons outlined above, EPA is now proposing an MCLG of zero for lead and so a discussion of what the safety factor would be is much less relevant than when a non-zero MCLG was proposed. The National Academy of Sciences and others suggest that a safety factor of 10 should be used when extrapolating from data obtained in human epidemiology studies to the general population. This was meant to address well-defined, known toxic endpoints. The endpoints in the case of lead exposure are extremely subtle enzymic and physiologic occurrences, and are not comparable to the traditional toxic endpoints. There is considerably less uncertainty about health effects from lead than from any other chemical. Excellent human data are available. Therefore, there is less need to apply the usual uncertainty factors in this case and a lower uncertainty factor is appropriate.

Comment Summary: Some commenters disagreed with the MCLG of 0.02 mg/l proposed for lead. One maintained that it has not been proven that low level lead exposure has adverse health effects and, therefore, the present level of 0.05 mg/l is fully protective and should not be decreased. Another commenter stated that since the primary sources of lead exposure are air and dust, available funds should be spent on reducing exposure from sources such as leaded gasoline and lead-based paint rather than drinking water, and cited a study by Morse et al. (1979) in support of the contention that drinking water lead does not increase blood lead levels.

EPA Response: EPA disagrees that low level lead exposure does not pose a health risk. The literature reviewed by this commenter is cursory and very selective, and only literature supportive of the commenter's perspective was included in the comment. EPA has reviewed and evaluated all relevant literature. In the November 1985 proposal, the Agency cited the Ryu et al. (1983) study as being the appropriate study to determine the effects of low level lead exposure on blood levels in infants, the most vulnerable subpopulation. In addition, EPA has reviewed further studies, discussed above, which also support the

conclusion that there are adverse health risks at low level exposure levels.

EPA agrees that lead exposure from air, dust, and paint are important. These exposures are being addressed by other agencies such as the Department of Housing and Urban Development, and within EPA by other offices such as the Office of Air and Radiation (OAR). The study by Morse, et al. (1979) concluded that increased concentrations (over source water levels) of lead in soft, acidic drinking water are transported by distribution pipes. While the authors concluded that they could determine no level of drinking water lead that would increase blood lead levels, the data base was too small to produce statistically valid results. In addition, the average blood lead level in both the control group and the case group of children six years old and younger both exceeded 15 ug/dl. The blood lead levels of the one- and two-year-olds was >20 ug/dl. When blood lead levels are high, the relationship between blood lead and water lead appears to be relatively obscured by the higher body burden, in both the study and the control groups.

2. MCLG for Copper

EPA proposed an MCLG of 1.3 mg/l for copper in the November 1985 notice. As noted above, no new data that change the conclusions presented in that notice have become available since its publication. EPA is, therefore, reproposing an MCLG of 1.3 mg/l for copper.

The proposed MCLG of 1.3 mg/l for adults and children was based on a Lowest Observed Adverse Effect Level (LOAEL) of 5.3 mg/day from human clinical case studies in which 5.3 mg was the lowest acute oral dose at which gastrointestinal effects were seen (Chuttani et al., 1985). An uncertainty factor of two was applied, and daily consumption of 2 liters of water per day by an adult was assumed. Ten-day and longer exposure values were not derived because the data were inadequate.

Public Comments: Fourteen individuals and organizations commented on the MCLG proposed for copper in 1985. Several commenters agreed that it was reasonable to use short-term toxicity data as the basis for the proposed MCLG of 1.3 mg/l.

Several commenters thought that an MCLG for copper was unnecessary and that it would be more appropriate to issue a health advisory for the contaminant. The reasons included: (1) Inadequate adverse health effects data, (2) limited occurrence of copper in drinking water, and (3) the fact that copper is present in drinking water due to corrosion of copper pipes; thus,

treatment at the water supply plant would not solve the problem of elevated copper concentrations.

EPA Response: EPA does not agree that there are inadequate health effects data for regulating copper. The data indicate that copper is a health risk at levels above 1.3 mg/l in water (although it is beneficial at lower levels); acute exposure to copper has resulted in gastrointestinal effects, such as nausea and diarrhea, as discussed in the 1985 proposal and above. EPA agrees that copper is not commonly found above the proposed MCLG, but high levels of copper have occasionally been detected in drinking water supplies across the country, and high levels of copper can leach from pipes in areas with corrosive water. Thus, EPA believes an MCLG and NPDWR are justified to protect against adverse health effects. In addition, Congress listed copper as one of 83 drinking water contaminants mandated for regulation in the 1986 amendments to the SDWA. Since EPA did not substitute another contaminant in place of copper (as authorized by section 1412(b)(2) of the SDWA), it remains on the list of 83 contaminants for which EPA must promulgate an MCLG and NPDWR.

IV. National Primary Drinking Water Regulations for Lead and Copper

A. Occurrence

1. Occurrence of Lead and Copper in Source Water and Distributed Water

a. **Lead.** There are several national surveys of lead occurrence in water leaving the treatment plant and entering the distribution system (distributed water). Well water drawn for drinking water generally has very low lead concentrations. In a national drinking water survey of nearly 1000 randomly chosen groundwater supplies completed in 1987 (the National Inorganics and Radionuclides Survey or NIRS), about 5 percent of the drinking water samples collected from fully flushed taps exceeded 0.005 mg/l of lead (EPA, 1988g). However, recent samples taken to determine the effect of the measurement point on estimates of lead in distributed water indicate that lead as a by-product of corrosion may enter fully flushed tap samples and be attributed erroneously to source water. Therefore, EPA resampled the supplies in NIRS that showed positive results for lead. EPA found very few samples above 0.005 mg/l of lead when the sampling point was moved to the entry point to the distribution system. Based on these new data, EPA estimates that approximately 90% groundwater

suppliers (or 1 percent of the community and non-transient, non-community water systems) may have water leaving the treatment plant that has greater than 0.005 mg/l lead (EPA 1988a).

A significant portion of the total lead present in surface waters exists as part of the suspended solids. This portion comes from natural soil lead augmented by atmospheric deposition and discharges by industrial and municipal discharges to surface water. The level of lead in water drawn from rivers and streams is slightly lower than the concentration found in groundwater. Eighty-six percent of the raw surface water samples analyzed by Fishman and Hems (1976) contained less than 0.010 mg/l of lead and less than 1 percent contained over 0.050 mg/l. However, the concentration of lead in distributed water from these sources may be much lower due to removal by treatment, e.g., sedimentation, prior to distribution.

The National Organic Monitoring Survey (NOMS, 1976) also provided data on the quality of fully flushed water from surface water supplies. The level of lead in the samples in this survey ranged from 1-10 µg/l.

Based on this information, EPA estimates that about 99 percent of the 219 million people in the United States using public water supplies (both surface and groundwater sources) are exposed to distributed water levels between 0 and 0.005 mg/l, and that about 2 million people are served by distributed water with levels of lead greater than 0.005 mg/l.

b. *Copper.* Copper levels above the proposed MCLG are rarely found in raw drinking water supplies or in distributed water. In the NIRS study (EPA, 1988g), which surveyed 983 randomly selected groundwater supplies, 85 percent of all fully flushed tap samples had copper levels below 0.06 mg/l; and 98 percent of such samples had copper levels below 0.46 mg/l. Less than 1 percent of the samples had copper levels above 1.0 mg/l. The maximum value found was 2.37 mg/l. In the 1969 Community Water Supply Survey (CWSS), samples were taken from 678 groundwater supplies, 109 surface water supplies, and 182 supplies of unknown or mixed origin (a total of 969 systems). For the groundwater supplies, the maximum copper level found was 0.47 mg/l and the mean of the positive measurements (i.e., those exceeding the detection limit of 0.1 µg/l) was 0.075 mg/l. For the surface water supplies, the maximum copper value found was 0.304 mg/l, and the mean of the positive measurements was 0.066 mg/l. EPA estimates that only 66 water suppliers would need to install

treatment to lower copper levels to the MCLG (EPA, 1988a).

2. Occurrence of Lead and Copper as By-Products of Corrosion

a. *Lead.* Even when water leaving the water treatment plant is relatively lead-free, pipes, solder, and fixtures containing lead are corroded by water resulting in contamination of the water. Lead present in plumbing materials can be mobilized, resulting in significantly higher levels at the user's tap than in the water leaving the treatment plant. Three factors are particularly important in determining the degree of corrosion. First, the combination of copper pipes with solder containing lead found in most households can result in elevated lead levels due to galvanic corrosion. Galvanic corrosion is especially important in the case of newly-installed solder, which is particularly reactive. Therefore, people living in housing with lead-soldered plumbing less than five years old are at risk of having high levels of lead in drinking water. Second, the corrosivity of the water towards lead is a major factor influencing the occurrence of lead as a corrosion by-product. Third, regardless of age, water that has been in contact with lead pipe or solder for a period of time will contain higher lead levels than flushed water from the same pipe.

While the critical factors affecting lead levels in drinking water are well recognized, there are not sufficient quantitative data available to determine the national distribution of lead levels in drinking water at the tap in much detail. EPA has some morning first draw data, but these data were not collected in a systematic fashion and are therefore not nationally representative of lead levels at the tap. For example, of the 40 individual cities which collected and provided data to EPA, some targeted new housing or other high risk taps while others took random samples. In addition, certain geographic areas are severely under-represented. These data portray lead levels in cities with several water types, including both waters considered very corrosive towards lead and those considered to be relatively noncorrosive. Thus, these data are most useful for assessing the lead levels likely to occur under specific water quality conditions and with different plumbing materials. These systems have frequently measured levels of lead in morning first draw samples as high as 1-2 mg/l. A detailed presentation and analysis of these data appears in the Treatment and Occurrence Support Document (EPA, 1988h).

As described earlier, in the Patterson (1981) study, random daytime grab

samples flushed for 30 seconds were collected and analyzed for lead. Flushing for 30 seconds will tend to result in samples with lower lead levels compared with levels that might be found in morning first draw samples and random daytime grab samples, because of the lower average standing time, tend to be lower also. The Patterson data are useful because of the large number of samples taken (782 samples), and because the geographic distribution of the samples was representative of the country (58 cities in 47 States were sampled). The percentage of samples collected from each State generally reflects the State population, except for California, which was slightly under-represented, and Illinois, which was somewhat over-represented. In the study, 60 percent of all samples were less than or equal to 0.010 mg/l, 84 percent were less than 0.020 mg/l, 97 percent were less than 0.050 mg/l, and 3 percent were greater than or equal to 0.050 mg/l. (Information on lead levels below 0.010 mg/l are not available from this study, as the reported analytic detection limit was 0.010 mg/l.)

Because lead in tap water occurs primarily as a by-product of corrosion, the extent of moderately or highly corrosive water can give an indication of the potential extent of lead in tap water. The extent of corrosive water in the U.S. has been evaluated in several studies. The U.S. Geological Survey (USGS) (Durfor and Becker, 1964, as reported by EPA, 1986a) found that 17 States had very soft (corrosive) water (less than 60 mg/l as CaCO₃). The first National Health and Nutrition Examination Survey (NHANES I) was conducted by the National Center of Health Statistics (Greathouse and Osborne, 1980, as reported by EPA, 1986a). It showed similar results: about one-third of the country had very soft water (under 60 mg/l as CaCO₃). The American Water Works Association (AWWA) has estimated that about 66 percent of public water systems deliver water with pH < 8 and/or carbonate alkalinity < 30 mg/l (EPA, 1988a). Also, data reported by public water supplies to the States pursuant to 40 CFR § 141.42(d) indicate that as many as 80 percent of public water systems may deliver moderately or highly corrosive water, as indicated by pH < 8 and/or alkalinity < 30 mg/l (EPA, 1988i).

As explained above, lead levels in tap water can be particularly high when lead solder is less than five years old, due to galvanic action between lead solder and copper pipes (Oliphant, 1982 and 1983). A recent study by EPA (1986a) estimated the extent of housing

likely to contain lead solder particularly susceptible to galvanic corrosion by estimating the number of new houses in the U.S. Based on the number of new housing starts in 1983 and 1984, EPA estimated in 1986 that there were about 3.5 million new housing units less than 2 years old. About 8.1 million people were estimated to live in new homes served by public water supplies. Using the same method, the Agency now estimates that about 4.3 million homes are three to five years old and they house about 11 million people served by public water supplies.

b. *Copper*. Patterson (EPA, 1981) also measured copper levels in the 30-second partially flushed samples taken at random times during the day. In that study, 3 percent of the samples had copper levels exceeding 1 mg/l and 19 percent exceeded 0.2 mg/l. The national average was 0.221 mg/l (median=0.04 mg/l). The south central U.S. had the lowest average levels (average=0.82; median=0.02 mg/l), and the northeast had the highest average levels (average=0.526 mg/l; median=0.06 mg/l).

B. Regulatory Approach

In developing a regulatory approach for controlling lead and copper in drinking water, EPA was confronted with several problems. As described in the previous section, lead and copper differ in a very basic way from other drinking water contaminants because they generally do not occur in significant amounts in source water; rather, they generally enter the water in the distribution system from the corrosive action of the water in contact with plumbing materials containing lead and copper. Thus, the traditional regulatory approach, which is based on removing drinking water contaminants at the treatment plant prior to distribution, will have little or no effect on lead and copper levels at the consumer's tap (except for systems with lead and/or copper in their source water). Second, much of the lead- and copper-bearing plumbing material is privately owned (i.e., inside of buildings) and outside the public water system's control, which, in turn, restricts the regulatory options available, since national primary drinking water regulations only apply to public water systems.

Third, the occurrence of lead and copper contamination emanating from corrosion of plumbing systems within individual residences and other buildings introduces a wide source of potential variability among lead and copper levels that will be present in water samples taken at the tap. This problem makes it difficult for EPA to set

uniform numbers, i.e., MCLs, for these contaminants that can be met at taps throughout a public water system.

Today's notice proposes a two-part approach to address the two sources of lead and copper in drinking water (corrosion of plumbing in the distribution system and source water contamination): A treatment technique requiring corrosion control to reduce leaching of lead and copper and public education to reduce exposure, and MCLs applicable to water entering the distribution system. This section explains EPA's rationale for this approach.

1. Treatment Technique Considerations

As explained earlier, the Safe Drinking Water Act, as amended in 1986, requires EPA to promulgate NPDWRs for 83 contaminants including lead and copper. Section 1412(b)(1). The Act does not distinguish between the two very different ways in which contaminants can enter drinking water: As by-products of corrosion versus occurrence in source water. The Act states that an NPDWR must contain an MCL or a treatment technique, and that EPA is authorized to promulgate a treatment technique in lieu of an MCL if it finds that it is not "economically or technologically feasible to ascertain the level of the contaminant." Sections 1401(1)(C) and 1412(b)(7)(A).

In developing the proposed regulation, EPA considered whether it was feasible to adequately monitor drinking water for the parameters of concern. Although it is feasible to measure accurately the amount of lead in a given water sample down to the practical quantitation limit (PQL), 0.005 mg/l (as described below), and copper down to the MCLG, these measurements alone bear little relation to the major issue of concern—the rate and extent of corrosion of lead and copper from plumbing materials.

As explained earlier, there can be considerable variability in lead and copper levels at the tap; even under constant water conditions (e.g., pH, alkalinity, temperature, and other parameters), there will be variability depending on the age and configuration of the building's plumbing. In addition, because water suppliers begin with different source waters, after corrosion control treatment to achieve particular levels of specified water quality parameters (e.g., pH = 8) lead and copper levels can still vary (assuming there is at least some of each of these metals in the plumbing system).

Generally, application of an effective treatment technology to remove contaminants will result in predictable contaminant levels in the finished water.

Thus, measuring these levels will indicate whether treatment was effectively applied. For instance, application of reverse osmosis treatment to influent water with lead and copper levels in a specified range will reliably reduce the amount of lead and copper to certain levels; thus, measuring the effluent lead and copper levels will indicate whether the treatment was effective. In contrast, a single measurement of the lead or copper level at an individual tap is not a meaningful measure of the efficacy of any corrosion control treatment that is being applied because lead and copper levels at the tap can vary for reasons other than treatment effectiveness. Since the resulting lead and copper levels will vary from system to system (and even from tap to tap within a system) after corrosion control treatment is applied, it is technologically infeasible to ascertain whether the lead or copper level at a tap at a single point in time represents effective application of the best available treatment technology, assuming BAT is optimal corrosion control treatment. The only way to tell whether a given system has optimized corrosion control treatment is to determine which specific water conditions, such as pH level, result in the lowest lead or copper levels for that system.

In conclusion, because of the variability of the occurrence of lead and copper within and among water systems, the Agency is unable to select a single level of lead or copper in drinking water that indicates whether a system has implemented optimal corrosion control treatment. Unfortunately, there is no known reliable index or measure of water corrosivity towards lead and copper plumbing materials either. Therefore, EPA is proposing treatment technique requirements to control lead and copper as corrosion by-products.

2. Problems with Setting an MCL at the Tap

EPA considered whether it could set MCLs at the tap for lead and copper that were based on optimal corrosion control treatment, as well as removal of lead and copper from source water at the treatment plant. Under section 1412(b)(4) of the Act, the MCL must be set as close to the MCLG as feasible. "Feasible" means "feasible with the use of the best technology, treatment techniques and other means which the administrator finds * * * are available (taking cost into consideration)" (BAT). Section 1412(b)(5). Thus, in setting MCLs for lead and copper based on optimal

corrosion control treatment, EPA would have to determine what levels of these contaminants are "feasible" to achieve using this technology. In considering what levels are feasible to achieve, EPA must consider the range of conditions a public water system faces. Some customers may have plumbing containing only small amounts of lead and copper (so leaching is less likely), while others may have plumbing that contains large amounts of lead, possibly as new lead solder (so leaching is more likely).

In determining what is feasible, EPA also must consider the extent of the public water system's responsibility under the Safe Drinking Water Act for contaminant levels at the tap, especially for contaminants entering the water from the distribution system after any treatment, i.e., corrosion by-products. Under section 1411, NPDWRs apply to "public water systems." Section 1401(4) defines "public water system" as:

A system for the provision to the public of piped water for human consumption * * *. Such term includes (A) any collection, treatment, storage, and distribution facilities under control of the operator of such system * * * and (B) any collection or pretreatment storage facilities not under such control * * *.

It is important to note that this definition clearly distinguishes between facilities under the system's control and facilities that are not. Furthermore, the term "public water system" specifically includes "distribution facilities under control of the operator of such system"; yet "distribution facilities" are not listed among the facilities *not* under the system's control that are nonetheless included in the definition of public water system. Thus, it appears that while Congress included distribution systems within the public water system's control, it deliberately excluded distribution facilities not under the system's control, e.g., customers' plumbing, from the definition of "public water system." EPA believes this provision precludes the Agency from promulgating an NPDWR that holds a public water system liable for conditions in the parts of the distribution system that are outside its control. This is a reasonable interpretation since the public water system does not generally have control over these facilities and thus should not be held responsible for them.

Because the public water system is not responsible for distribution facilities outside its control, the question arises as to what MCLs based on corrosion control are feasible for lead and copper given that the standard must take into account the range of conditions

occurring in these facilities, i.e., in customers' plumbing. In other words, in setting MCLs for lead and copper based on optimal corrosion control treatment (and any necessary technology to remove lead and/or copper in the source water), EPA would have to select levels that are feasible for large public water systems to meet, regardless of the type and age of the plumbing in its customers' homes; any more stringent MCL would hold the system liable for a violation caused by distribution facilities outside its control, which would be inconsistent with the Act's definition of public water system.

In reviewing the data available, it appears that any MCL for lead at the tap that would be feasible, i.e., achievable by systems that have installed the best available technology (assuming BAT consists of some technology that removes any lead in the source water and optimal corrosion control treatment), regardless of the condition of its customers' plumbing, would be relatively high, perhaps a maximum of 0.030-0.040 mg/l in single samples of morning first draw water, or an average of 0.015-0.020 mg/l in morning first draw samples. EPA believes these levels represent unnecessarily high exposures for large segments of the population.

It has been suggested that, rather than selecting an MCL that systems could meet regardless of homeowner plumbing, EPA should set a more stringent MCL and make variances available for systems that cannot meet it because of homeowner plumbing. Under section 1415 of the Act, variances are available to systems which cannot meet an MCL "because of characteristics of the raw water sources which are reasonably available to the systems." EPA believes Congress intended that variances should be available when levels of the regulated contaminant were so high in the source water that BAT could not remove sufficient quantities to meet the MCL, or when some other characteristic of the source water prevented the best available technology from achieving the MCL. In the case of corrosion by-products such as lead and copper, any exceedence of an MCL at the tap after application of BAT (assuming it consists of technology to remove these contaminants in the source water and installation of optimal corrosion control treatment) would not be the result of extraordinary levels of the contaminant in the source water. Rather, the exceedence would be due to the addition of lead and/or copper from leaching of materials in the distribution system including plumbing in individual houses. This rules out the first basis for the variance, i.e., levels too high for

effective removal by BAT. Arguably, however, a system could get a variance on the second basis, i.e., because the nature of its raw water source is such that, even after installation of BAT (assuming BAT consists of a technology to remove any lead and/or copper in the source water and optimal corrosion control treatment), the system could not meet the MCL. At least three problems arise with this approach, however.

The first problem is that variances are temporary in nature; section 1415 assumes eventual compliance with the standard when a variance is granted. This section specifically requires that every variance be accompanied by a schedule for coming into compliance; this schedule must require compliance "as expeditiously as practicable." However, it is likely that, in cases where the MCL violation is a result of corrosion of private plumbing, there will not be sufficient measures that a public water system can take unilaterally to achieve compliance. Thus, no reasonable compliance plan (much less a schedule for implementing it) could be devised. The second problem is that many, if not all, systems would require variances because at least a few, if not many, buildings served by them are likely to have lead and/or copper plumbing that are not under the water supplier's control. The Agency does not believe it makes sense to promulgate an MCL that many systems not only cannot meet now, but also could not meet at some future time. Furthermore, the Act requires that an MCL must be feasible. In determining what is feasible, the legislative history of both the Safe Drinking Water Act of 1974 and the 1986 amendments indicates that EPA is to consider whether the technology is reasonably affordable by regional and large metropolitan public water systems (see H.R. Rep. No. 93-1185, p. 18 (1974) and statement of Senator Durenberger, 132, *Cong. Rec.* S6287 (daily ed., May 12, 1986)). Large systems are not less likely than smaller systems to serve homes with lead and/or copper plumbing; in fact, they are probably more likely to serve at least some such homes since they serve so many customers. EPA believes that an MCL that most large systems (as well as many small systems) cannot meet when they install BAT is not feasible under the Act. The third problem is that a system qualifies for a variance under section 1415 only if operation under the variance will not result in an unreasonable risk to health. Assuming there is some lead level(s) and some copper level(s) which represent an unreasonable risk to health, then any system exceeding these

levels would not qualify for a variance. Thus, the systems that "need" the variance the most (i.e., those least capable of meeting the MCL because they are the furthest from compliance) would not qualify for it.

Despite these considerations, some interested parties nonetheless have indicated that they believe MCLs at the tap are appropriate for regulating lead and copper. EPA solicits comments on the details of such a regulation, including suggestions on overcoming the difficulties associated with an MCL approach that are described above. Specifically, commenters should specify the appropriate MCL and the basis for selecting this value, what monitoring requirements should apply (e.g., whether the NPDWR should allow systems to avoid monitoring at residences with high lead and/or copper content in their household plumbing), and whether systems that have installed BAT and still cannot meet the MCL because of private plumbing should be considered permanently out of compliance (and thus subject indefinitely to public notification requirements and citizen suit enforcement actions to compel compliance).

3. MCLs Applicable to Water Entering the Distribution System

While EPA recognizes that most of the lead and copper found in drinking water from the tap is added by plumbing after the water leaves the treatment plant, as described above, in an estimated one percent of the systems, lead and/or copper may occur at high levels in the source water. Therefore, EPA evaluated the feasibility of establishing MCLs for lead and copper in distributed water, i.e., MCLs that would apply, and for which compliance could be monitored as the water enters the distribution system, after any treatment. Such MCLs would not be subject to the problems associated with establishing MCLs to control contributions of lead and copper due to corrosion and monitoring for compliance with such MCLs. These MCLs would reduce total lead and copper levels by removing these contaminants when they occur in source water.

4. Summary of Proposed Regulatory Approach

In conclusion, most of the lead and copper found in drinking water at the tap is added by plumbing after the water leaves the treatment plant. In a few systems, lead and/or copper may occur at high levels in the source water. Therefore, the most important step a public water system can take to control lead and copper levels at the tap is to install optimal corrosion control treatment. However, it is technically infeasible to set MCLs at the tap for these contaminants because no single lead or copper measurement, or any other water parameter, indicates whether treatment was effectively applied, i.e., corrosion control treatment has been optimized. Consequently, in this rule, EPA is proposing an NPDWR consisting of a treatment technique requirement that would require optimal corrosion control treatment. In addition, this MPDWR would require public education when lead levels exceed certain values even after optimal corrosion control treatment.

In addition, the Agency is proposing MCLs for lead and copper that would apply to water leaving the drinking water treatment plant (if the water is treated) and entering the distribution system. By limiting lead and copper in distributed water, this proposal would result in contaminant levels closer to the MCLGs than would be possible with the treatment technique rule alone. Together, these three NPDWRs (one for lead and copper as corrosion by-products, one for lead in source water, and one for copper in source water) would address the contamination of drinking water by lead and copper.

Today's proposal would fulfill the goal of the SDWA by requiring an important reduction in the levels of lead and copper present in consumers' water. EPA believes the resulting lead and copper levels would be as close to the MCLG as is feasible. In addition, EPA believes that these proposed NPDWRs (establishing "no-action levels" of an average lead level of 0.010 mg/l lead, 1.3 mg/l or less copper in 95 percent or more samples, and pH > 8 in 95 percent or more samples to trigger treatment,

and a no-action level of an average of 0.010 mg/l lead and 0.020 mg/l or less lead in 95 percent or more samples to trigger public education) would be protective of public health. The Agency expects that implementation of this proposal would result in large reductions in the number of people who experience blood lead levels above the range of concern of 10-15 ug/dl, and above 25 ug/dl, the level above which CDC recommends medical intervention. Section X.A of this notice presents estimates of the benefits associated with the proposal.

C. Treatment for Lead and Copper in Source Water

EPA evaluated technologies for treatment of lead and copper in source water to determine which are BAT. Table 1 summarizes the technologies identified by EPA for the removal of these drinking water contaminants. Table 2 lists the removal efficiencies that are attainable through the use of the identified technologies. Examination of these technologies indicates that they are capable of reducing contaminant levels from the maximum levels of occurrence in source water to the proposed MCLG for copper and down to 0.005 mg/l for lead. Table 3 shows the removal efficiencies that would be required of treatment technologies to reduce the maximum expected influent concentrations down to 1.3 mg/l for copper and 0.005 mg/l for lead (listed as "MCL-Effluent Concentration" in the table. The influent concentrations assumed correspond to maximum observed occurrence levels in drinking water sources.

TABLE 1.—CANDIDATE BEST AVAILABLE TECHNOLOGIES (BATs) FOR THE REMOVAL OF LEAD AND COPPER FROM DRINKING WATER SUPPLIES

Con-taminant	Technologies			
	Coagu-lation/ Filtration	Ion ex- change	Lime soften- ing	Reverse osmosis
Lead.....	X.....	X.....	X.....	X
Copper....	X.....	X.....	X.....	X

TABLE 2.—REMOVAL EFFICIENCIES OF CANDIDATE BATS^{1,2}

[in percent]

Contaminant	Technologies (percent removal)			
	Coagulation/ Filtration	Ion exchange	Lime soften- ing	Reverse osmosis
Lead.....	80-99	up to 95.....	97-99	90-99
Copper.....	60-95	up to 95.....	90-96	90-99

¹ Source: "Technologies and Costs for the Removal of lead from Potable Water Supplies." Office of Drinking Water, October 23, 1984. Revised Final Draft.² Source: "Technologies and Costs for the Removal of Copper from Potable Water Supplies." Office of Drinking Water, June 15, 1985. First Draft.

TABLE 3.—REMOVAL EFFICIENCIES NECESSARY TO ACHIEVE SPECIFIED EFFLUENT CONCENTRATIONS

Contaminant	Occurrence-influent concentration	MCL—effluent concentration	Percent removal required to achieve Proposed MCL
Lead.....	0.100 mg/l	0.005 mg/l	95
Copper.....	10 mg/l	1.3 mg/l	87

The costs for the removal of these contaminants, assuming the same influent and effluent levels cited in Table 3, using various technologies, are summarized in Tables 4, 5, 6, and 7. The general assumptions used to develop the treatment costs include: Late 1986 chemical costs, capital costs amortized over 20 years at a 10 percent interest rate, late 1986 engineering fees, contractor overhead and profit, and late 1986 power and fuel costs and labor rates.

TABLE 4.—SAMPLE ESTIMATED COSTS OF REMOVAL OF CONTAMINANTS FROM SOURCE WATER BY VARIOUS TECHNOLOGIES INCLUDING WASTE DISPOSAL COST¹

[cents/1,000 gallons, 1986 dollars]

Contaminant/technology	Population served				
	25-100	500-1000	1001-3300	3301-10,000	> 1,000,000
Lead					
Ion exchange.....	270	100	74	69	32
Reverse osmosis.....	620	320	260	220	160
Lime softening.....		230	140	180	68
Coagulation/Filtration.....		160	91	90	24
Copper					
Ion exchange.....	250	94	67	60	30
Reverse osmosis.....	540	300	230	190	140
Lime softening.....		43	21	9	1
Coagulation/Filtration.....		160	90	82	23

¹ Costs derived from: "Cost Supplement to Technologies and Costs for the Removal of Lead from Potable Water Supplies." ODW. Jan. 19, 1987. First Draft; "Cost Supplement to Technologies and Costs for the Removal of Copper from Potable Water Supplies." ODW. Jan. 19, 1987. First Draft; and "Technologies and Costs for the Treatment and Disposal of Waste By-Products from Water Treatments for the Removal of Inorganic and Radioactive Contaminants." ODW. Sept. 23, 1986. Revised Draft.

TABLE 5.—SAMPLE ESTIMATED CAPITAL COSTS FOR REMOVAL OF LEAD AND COPPER¹ BY VARIOUS TECHNOLOGIES FOR SELECTED SYSTEM SIZE CATEGORIES

[millions 1986 dollars]

Contaminant/technology	Population served		
	25-100	3300-10,000	> 1,000,000
Lead			
Ion exchange.....	0.09	1.4	170
Reverse osmosis.....	0.13	4.8	1,140
Lime softening.....		1.4	310
Coagulation/Filtration.....	0.17	3.0	380
Copper			
Ion exchange.....	0.09	1.3	160
Reverse osmosis.....	0.11	3.4	1,060
Lime softening.....		0.23	1.3
Coagulation/Filtration.....	0.20	2.3	340

¹ Costs derived from: "Cost Supplement to Technologies and Costs for the Removal of Lead from Potable Water Supplies." ODW. Jan. 19, 1987. First Draft; "Cost Supplement to Technologies and Costs for the Removal of Copper from Potable Water Supplies." ODW. Jan. 19, 1987. First Draft; and "Technologies and Costs for the Treatment and Disposal of Waste By-Products from Water Treatments for the Removal of Inorganic and Radioactive Contaminants." ODW. Sept. 23, 1986. Revised Draft.

TABLE 6.—SAMPLE ESTIMATED ANNUAL INCREASE IN HOUSEHOLD WATER BILLS DUE TO APPLICATION OF BATs FOR REMOVAL OF LEAD AND COPPER REMOVAL ¹ FOR SELECTED SYSTEM SIZE CATEGORIES

[dollars household/yr; 1986 dollars]

Contaminant/technology	Population served		
	25-100	3,300-10,000	> 1,000,000
Lead:			
Ion exchange.....	270	69	32
Reverse osmosis.....	620	220	160
Lime softening.....		180	68
Coagulation/Filtration.....		12	2
Copper:			
Ion exchange.....	250	60	30
Reverse osmosis.....	540	190	140
Lime softening.....		9	1
Coagulation/Filtration.....		82	23

¹ Cost derived from: "Cost Supplement to Technologies and Costs for the Removal of Lead from Potable Water Supplies." ODW. Jan. 19, 1987. First Draft; "Cost Supplement to Technologies and Costs for the Removal of Copper from Potable Water Supplies." ODW. Jan. 19, 1987. First Draft; and "Technologies and Costs for the Treatment and Disposal of Waste By-Products from Water Treatments for the Removal of Inorganic and Radioactive Contaminants." ODW. Sept. 23, 1986. Revised Draft.

TABLE 7.—WASTE BY-PRODUCT DISPOSAL COSTS FOR PUBLIC WATER SYSTEMS—ALTERNATIVES WITH LOWEST COST ¹

[cents/1,000 gallons drinking water produced; 1986 dollars]

Contaminant/Technology	Population Flow (MGD)	25-100 0.013	101-500 0.004	501-1000 0.1333	1001-3300 0.40	3301-10K 1.30	1,000,000 650
Sludges:							
Lime softening							
Dewatering and land disposal ²	550	240	120	80	60	40	
Land application.....	1200	380	150	80	50	60	
Coagulation/filtration							
Sanitary sewer discharge							
—Copper.....	190	62	28	15	5	1	
—Lead.....	160	48	22	10	4	0	
Dewatering and land disposal ²	300	120	55	30	20	7	
Brines:							
Ion exchange							
Discharge to POTW ³	100	71	45	25	12	2	
Reverse osmosis							
Direct discharge.....	85	42	20	11	5	0	
Discharge to POTW.....	220	150	90	47	27	10	

¹ Draft, "Technologies and Cost for the Treatment and Disposal of Waste By-products from Water Treatments for the Removal of Inorganic and Radioactive Contaminants." ODW. Sept. 23, 1986. Revised Draft.

² Dewatering by nonmechanical methods, e.g., lagoons and drying beds.

³ Publicly owned treatment works.

Costs for individual plants may vary from those shown, depending on local circumstances. However, based on available information, the costs in Tables 4-7 are representative of typical system costs using these technologies. Two different models have been used to calculate the costs in Tables 4-7. A small system cost model has been used for systems that serve less than 3,300 people. This model assumes that a package treatment plant would be installed to treat the water. The model used for systems serving more than 3,300 people assumes that the treatment plant would be built in the field.

Costs of treatment will be less than shown in Tables 4, 5, 6, and 7 if contaminant concentration levels encountered in the raw water are lower than the maximum occurrence levels

used for the supporting calculations. EPA expects this to be the case in most instances. For example, if the contaminant level in the raw water is half of the maximum occurrence level, then treatment costs could be expected to be approximately 20 to 50 percent lower than the costs presented. However, costs of treatment could be higher if, for instance, there are additional site-specific treatment or storage requirements. The various removal technologies considered are described in more detail below.

1. Ion Exchange

This notice proposes to designate sodium cation exchange to remove lead and copper as BAT because of its demonstrated ability to reduce levels of lead and copper to 0.005 mg/l for lead

and to the proposed MCLG for copper, at reasonable costs. Sodium cation exchange resins and ion exchange equipment are readily available commercially. Sodium cation exchange has been successfully used in the field, and pilot plant studies demonstrate that this technology can be used to remove up to 95 percent of lead and up to 95 percent of copper from water. Ion exchange treatment can be implemented effectively for all sizes of treatment facilities. The cost of employing ion exchange for removal of lead and copper in drinking water has been estimated for source water lead concentrations of 0.100 mg/l and source water copper concentrations of 10 mg/l and are included in Tables 4, 5, 6, and 7. Blending can significantly reduce ion exchange equipment requirements and

operating costs, since then only a portion of the raw water has to be treated. Ion exchange is adversely affected by the presence of turbidity, iron, and organic contaminants. Pretreatment may therefore be necessary in some cases. Also, ion exchange can soften water, making it more corrosive, especially if calcium breakthrough is used as the indicator for resin regeneration.

2. Reverse Osmosis

EPA also is proposing to designate reverse osmosis (RO) technology as BAT because it has been demonstrated to be effective in removing lead and copper at reasonable costs. RO has been widely used on a full scale basis for the reduction of other contaminants, and pilot plant studies demonstrate that this technology is capable of removing 95 percent of lead (when source water lead is 0.100 mg/l) and 95 percent of copper (when source water copper is 10 mg/l) from drinking water. The costs of employing RO to reduce these contaminants from these levels in drinking water are presented in Tables 4, 5, 6, and 7. A major disadvantage of RO is that in removing dissolved solids from water, and thereby softening it, RO makes the water more corrosive toward lead and copper in plumbing. Thus, source water treated by this process would require subsequent corrosion control treatment to raise pH and stabilize the water before distribution.

RO performance is adversely affected by the presence of turbidity, iron, manganese, silica, or scale-producing constituents in source water. If pretreatment is not already in place to remove these constituents, the cost to install the pretreatment technologies (e.g., pH adjustment, filtration, application of scale prevention additives) may be considerable.

In the case of contamination of source water by several contaminants, in addition to lead and/or copper, the RO process may offer an especially desirable and cost effective approach to their removal. Blending can reduce costs, as only a portion of the water may need to be treated.

3. Lime Softening

Lime softening can achieve 97 to 99 percent removal of lead at pH levels of 9.0 to 10.5 and 90 to 96 percent removal of copper at pH levels of 9.0 to 11.5, as indicated by laboratory and pilot plant studies. This technology is considered BAT because it has been demonstrated to reduce lead and copper in water to 0.005 mg/l for lead and the proposed MCLG for copper at reasonable costs. Lime softening has been widely and

effectively used on a full scale basis for the reduction of hardness. The costs of installing new lime softening facilities to reduce contaminant concentrations in drinking water from 0.10 mg/l to 0.005 mg/l for lead and 10 mg/l the MCLG for copper are shown in Tables 4, 5, 6, and 7. One advantage of lime softening is that it increases the pH of the water and thus reduces its corrosivity.

4. Coagulation/Filtration

EPA is proposing coagulation/filtration technology as BAT for lead and copper removal because of its demonstrated ability to reduce levels of lead and copper to the proposed MCLG for copper and 0.005 mg/l for lead at reasonable costs.

Laboratory and pilot plant studies indicate that conventional coagulation/filtration using alum, and in some cases, ferric sulfate coagulant, can achieve 80 to 95 percent removal of lead at pH levels of 8.0 or above, and can achieve 60 to 95 percent removal of copper at these same pHs. Removal efficiencies are estimated based on source water lead levels of 0.10 mg/l and copper of 10 mg/l. Published studies (EPA, 1978) suggest that site-specific raw water quality indicators, such as pH, significantly affect the removal efficiency of alum when used to treat ground water. However, data are not available which specifically identify all optimum operating conditions of coagulation/filtration treatment for lead and copper removal.

Coagulation/filtration is very effective when ferric sulfate is used as the coagulant. In pilot-scale studies, greater than 95 percent removals have been achieved using this coagulant. When alum is used as the coagulant in doses above 20 mg/l, removal efficiencies of 95 percent have been achieved in surface water. For ground water, either much larger alum doses or pH adjustment is required to achieve 95 percent removal of lead. Coagulation/filtration has been used on a full scale basis for the reduction of other contaminants in water, including turbidity, particulate matter, and microbial contaminants (EPA, 1978). Estimated costs to reduce lead and copper using conventional coagulation/filtration are shown in Tables 4, 5, 6, and 7.

5. Selection of BAT

In conclusion, the Agency believes that, of the technologies that can remove lead and copper from source water, ion exchange, reverse osmosis, lime softening, and coagulation/filtration fulfill the requirements of the SDWA as BAT for lead and copper in source water. These treatment technologies

have high efficiencies for lead and copper removal from source water, and the cost of these technologies for large public water systems is reasonable. Under the Act, other treatment technologies could be used to remove lead or copper. However, a system would be required to install one of the BATs in order to be eligible for a variance from the MCL.

All of the technologies proposed as BAT are currently available, have been installed in public water systems, and are compatible with other water treatment processes in different regions of the U.S. Furthermore, these technologies are available and effective for the reduction of these contaminants from the maximum levels of occurrence in source water to 0.005 mg/l for lead and to the proposed MCLG level for copper (1.3 mg/l).

D. Treatment for Lead and Copper as Corrosion By-products

1. Corrosion Control

All water is corrosive to metallic plumbing materials to some degree; the relative corrosivity of a given water supply depends on a variety of factors. There is no single corrosivity index that can predict water corrosivity to lead and copper, and the water of each water supplier may be minimally corrosive to these metals under slightly different finished water quality conditions.

The degree of water corrosivity toward lead and copper plumbing materials depends largely on the pH and alkalinity of the water, although a number of additional factors, such as temperature, flow rate, free chlorine levels, age of plumbing materials, and other factors are important as well. While the use of specific plumbing materials in buildings is not under the control of water suppliers, water chemistry parameters are. Therefore, adjustment of water quality parameters, especially pH and alkalinity, to minimally corrosive ranges and addition of corrosion inhibitors are the primary methods of corrosion control treatment available to public water systems to minimize lead and copper levels.

The corrosivity of acidic water toward lead plumbing materials is well documented (EPA, 1982; Hoyt et al., 1979; O'Brien et al., 1976; Lyon and Lenihan, 1977; Gregory and Jackson, 1984). Water with pH below 8.0, and especially below 7.0, tends to be more corrosive toward lead and copper than water with pH greater than 8.0, and more corrosive water tends to produce water samples with higher lead and copper levels.

The alkalinity of water, which is related to pH, is also an important factor in determining its corrosivity and, in turn, its likelihood of producing high lead and copper levels at the tap. Water contains alkalinity in several forms, including carbonate ion, bicarbonate ion, and hydroxyl ion, in equilibrium. The pH of the water largely determines which of these species predominates in the equilibrium. At pHs less than 8.3, equilibrium favors the bicarbonate form. At pHs between 8.3 and 10, equilibrium tends toward the carbonate form, and pHs above 10 favor hydroxyl.

Under certain chemical conditions (especially high pH), the carbonate in water will react with lead in the plumbing to form a film of basic lead carbonate or other relatively insoluble salt on the interior surface of the pipes and solder. This film isolates the lead metal from the water and thus slows the rate at which lead from the pipes or solder is dissolved into the water. Carbonate also limits the amount of lead the water will hold in solution.

Depending on the raw water quality, treating the water to minimize its corrosivity may require the adjustment of pH and alkalinity, individually or simultaneously. Experience in field and laboratory studies indicates that stabilization of the water can reduce corrosion and reduce levels of lead substantially (EPA, 1982; Karalekas et al., 1983; Karalekas et al., 1978; EPA, 1988h). In addition, the presence of carbonate is an important factor in stabilizing the pH of the water because it adds buffering capacity. Without the buffering capacity imparted by the carbonate water pH can decrease as it moves through the distribution system.

There are also other methods for a water supplier to reduce the corrosivity of its water. These include the use of corrosion inhibitors, such as orthophosphates, and the adjustment of free chlorine levels (EPA, 1987c). Sodium hexametaphosphate has also been used as a corrosion inhibitor, as have other chemicals, although they may not be as effective as orthophosphates.

The rate of copper corrosion is also dependent on pH. However, alkalinity appears to be a less important factor than in copper corrosion than lead corrosion. Corrosion of copper pipe is rapidly accelerated at pHs below 5.0; morning first draw samples at pHs less than 5.5 will likely exceed 1.0 mg/l. The copper concentrations will increase with decreasing pH, increasing temperature, and decreasing age of copper pipe. As pH is increased to 8.0 and above, the rate of copper corrosion is reduced. The chemical behavior of copper and lead are similar so that most treatments (such

as pH and alkalinity adjustment) to lower the solubility of lead will have a similar effect on copper. For instance, the pH level for effective lead corrosion control is 8.0 or greater, and this is also an appropriate pH for control of copper corrosion. Therefore, EPA has determined that properly applied corrosion control for lead will also adequately control copper concentrations (AWWARF, 1985).

a. Methods of pH Adjustment. Adjustment of pH is one of the most common methods of reducing corrosion in water distribution systems. In many instances, if sufficient alkalinity is present, pH adjustment is adequate to control the corrosivity of water.

The least expensive and most commonly used chemical for pH adjustment is sodium hydroxide (NaOH, or caustic soda); potassium hydroxide may also be used in water with high sodium levels. Lime (especially in the form of calcium carbonate slurry) addition is also used commonly for pH adjustment. Experience in field, pilot plant, and laboratory tests indicates that a substantial reduction of lead and copper in drinking water may be achieved by pH adjustment. Estimated costs for pH adjustment using sodium hydroxide to control corrosion of lead and copper range from \$0.67/1,000 gallons for systems serving less than 100 persons to \$0.03/1,000 gallons for systems serving more than 1,000,000 persons. Estimated costs for pH adjustment using lime to control corrosion of lead and copper range from \$0.85/1,000 gallons for systems serving fewer than 100 persons to \$0.006/1,000 gallons for systems serving more than 1,000,000 persons (EPA, 1988h).

The Metropolitan Regional Water Authority (MRWA), which supplies water to Boston, Massachusetts, and surrounding communities, has implemented corrosion control by pH adjustment. (The MRWA used to be called the Metropolitan District Commission, or MDC.) The raw water is low in hardness, alkalinity, total dissolved solids, and pH. Prior to the start of corrosion control, treatment consisted of chlorination and ammoniation only.

The treatment program implemented by MRWA consists of adding 14 mg/l of caustic (50 percent NaOH) to treat 300 million gallons/day (MGD). The pH of the finished water is increased to 8.5 at the reservoir after treatment but before distribution. The alkalinity of the finished water is only slightly increased as a result of this treatment.

Samples were collected from twelve to fourteen homes served by MRWA over a period of five years. The

homes selected for the sampling program have lead service lines. Three samples were taken at each location representing first draw water (i.e., water in the interior plumbing), water from the service line, and water in the main (i.e., fully flushed water). The goal of the program was to reduce most samples to less than 0.050 mg/l. Since the sampling program began before the implementation of the corrosion control treatment, the effectiveness of this treatment toward its goal can be evaluated.

The results of this analysis have been published (Karalekas et al., 1983). In this article, the data from the fourteen locations were evaluated differently from the approach EPA is proposing in this rule for determining compliance. However, the effectiveness of the treatment in reducing lead levels can still be evaluated from the data. In this article, the results of all three samples from all locations sampled were averaged. The average lead concentration ranged from 0.060 mg/l to 0.128 mg/l between February 1976 and May 1977, before the use of NaOH to adjust pH began. The average lead concentration dropped substantially after the start of this treatment; except during two interruptions in the pH adjustment treatment, the average lead concentration was reduced consistently to below 0.050 mg/l (ranging from 0.010 mg/l to 0.050 mg/l), MRWA's target lead concentration.

In addition, the City of Seattle, Washington, has adjusted the pH of its Cedar River supply in an effort to control corrosion (EPA, 1988h). The treatment program implemented by Seattle in 1983 consists of adding 2 mg/l of lime as CaO to adjust the pH from 7.5 to 8.2. The total alkalinity in the raw water varies seasonally from 16.3 mg/l to 23 mg/l as CaCO₃.

Sampling to determine the extent of the problem began in 1979 and is still ongoing. Two samples are taken at each location. The first sample is a standing sample (not morning first draw) and the second sample is a flushed sample. The mean lead concentration for the Cedar River supply standing samples dropped from 0.0103 mg/l to 0.0038 mg/l after treatment. The percentage of standing samples with lead concentrations less than 0.010 mg/l rose from only 50 percent before treatment of 93.8 percent after treatment.

These data demonstrate that adjustment of pH can effectively reduce the corrosivity of water towards lead in interior plumbing and can greatly reduce the levels of lead in tap water.

b. Methods of Alkalinity Adjustment.

For waters that are low in carbonate or bicarbonate alkalinity, pH adjustment alone is often insufficient to control corrosion because there are insufficient carbonate ions in the water to form a protective layer on the interior surface of the pipes or lead solder. In those low alkalinity waters, carbonate ion must be added to form the insoluble carbonates. Soda ash (Na_2CO_3) or sodium bicarbonate (NaHCO_3) is typically added for this purpose.

Lime (calcium oxide slurry) or sodium hydroxide, in conjunction with soda ash (sodium carbonate) and sodium bicarbonate, may be used together to adjust pH and carbonate alkalinity simultaneously. These methods are cost-effective and are practiced by many water suppliers already. Estimated costs for treating the water using these chemicals range from \$1.49/1,000 gallons for systems serving 25 to 100 persons to \$0.08/1,000 gallons for systems serving more than 1,000,000 persons (EPA, 1988h).

A program to control corrosion combining pH and alkalinity adjustment was implemented by the City of Bennington, Vermont, on its water supply in August 1977. The treatment program consists of adding 3 mg/l of sodium hydroxide to adjust the pH from 5.0 to 7.2 and 10 mg/l of sodium bicarbonate to adjust the alkalinity from less than 1 mg/l to 15 mg/l as CaCO_3 . The goal of the program was to reduce average lead levels to less than 0.050 mg/l. Samples were collected periodically from nine to eleven homes from April 1977 to November 1980. Three samples were taken at each location, representing first draw water (i.e., water in the interior plumbing), water in the service line, and water in the main (i.e., fully flushed water). The mean lead concentration for the first flush samples was reduced from 0.101 mg/l to 0.0342 mg/l as a result of the treatment. The mean lead concentration in the service line samples was reduced from 0.184 mg/l to 0.0302 mg/l and the mean lead concentration in the fully flushed samples was reduced from 0.102 mg/l to 0.0167 mg/l as a result of this treatment. In addition, the number of samples with lead concentrations less than 0.010 mg/l increased as a result of the corrosion control treatment. While only 2.6 percent of the first flush samples contained less than 0.010 mg/l lead before treatment, after treatment was implemented, 20.9 percent of the first flush samples contained less than 0.010 mg/l lead (EPA, 1988h).

In 1983, the City of Seattle, Washington began adjusting pH and

alkalinity of its Tolt River supply. The treatment program consists of adding 2 mg/l of lime as CaO to adjust the pH from 6.2 to 8.2 and 9 mg/l of sodium carbonate as Na_2CO_3 to adjust the total alkalinity from 4 to 12 mg/l as CaCO_3 .

The study of the Tolt River supply was conducted at the same time as the study on Seattle's Cedar River supply, and the sampling procedure was the same as described in the discussion of the Cedar water supply above. The mean lead concentration for the standing samples from the Tolt River supply dropped from 0.0102 mg/l before treatment to 0.0041 mg/l after treatment. The percentage of standing samples with lead concentrations less than 0.010 mg/l increased as a result of treatment from 50 to 90.3 percent (EPA, 1988h).

These data show that increasing pH and alkalinity within appropriate concentration limits can effectively reduce the corrosivity of water towards lead in interior plumbing and greatly reduce the levels of lead in tap water.

c. Corrosion Inhibitors. Corrosion inhibitors control corrosion by accelerating or enhancing the formation of a protective film to serve as a barrier between the water and the pipe or solder surfaces. The most commonly used corrosion inhibitors include orthophosphates and silicates (although silicates may be more effective for reducing corrosion of iron or galvanized pipe than lead and copper pipe and solder). Recent data indicate that zinc orthophosphate may be the most effective corrosion inhibitor for lead pipe and solder (AWWARF, 1985).

Corrosion inhibitors have been used for years to reduce water corrosion by all sizes of water systems. Estimated costs for controlling corrosion with inhibitors range from \$0.91/1,000 gallons for systems serving less than 100 persons to \$0.007/1,000 gallons for systems serving more than 1,000,000 persons (EPA, 1988h).

d. Consideration of Disinfection Needs in Designing Corrosion Control Treatment. Use of corrosion inhibitors or adjusting the pH and alkalinity of water to reduce its corrosiveness toward lead and copper can have unintended effects on the quality of finished water. Water treatment should be carefully designed to account for the following circumstances.

Adjustment of pH can affect the effectiveness of disinfectants. For instance, if systems use chlorination for disinfection, elevation of pH should be delayed, to the extent possible, until just prior to when the water enters the distribution system. This will maximize the contact time during which

disinfection with chlorine is most efficient (since chlorination is most effective at low pHs) while also optimizing corrosion control in the distribution system.

Since elevated pHs may increase trihalomethane (THM) formation in the distribution system, systems using surface water sources should assure maximum THM precursor removal by optimizing the clarification process prior to increasing the pH. Systems using groundwater sources with high concentrations of THM precursors may need to install treatment to remove such precursors (e.g., membrane filtration) or use alternative disinfectants to free chlorine (e.g., chlorine dioxide or ozone followed by chloramines) in order to achieve adequate disinfection, minimize THM formation, and control corrosion at the same time. In certain cases, THM formation and the need to remove THM precursors may be reduced if orthophosphates or another corrosion inhibitor is used, as these chemicals work best at pHs somewhat below 8.

e. Materials Benefits of Corrosion Control Treatment. EPA recently published an analysis of the benefits of reducing lead levels in drinking water (EPA, 1986a). This analysis included an estimate of the materials benefits (in terms of reduced pipe corrosion and failure, increased service life for water meters, etc.) that are likely to result from requiring water suppliers to install corrosion control treatment. The report estimated that the materials benefits alone of corrosion control would exceed by more than two times the costs of implementing the treatment.

Further, a National Bureau of Standards report estimated that 20 percent of the costs of reported damage from water supply corrosion costs were avoidable by the use of control measures (Bennett et al., 1979). The national annual costs of damage from corrosion in the water supply field were estimated at \$700 million in 1975 (or \$1,300 million in 1986 dollars). However, these costs are only for distribution systems; often far greater corrosion costs are incurred through damage to interior piping and plumbing systems within buildings (Ryder, 1980). Corrosion control by suppliers would reduce these damages as well.

2. Lead Service Connection Replacement

EPA evaluated requiring the replacement of lead service lines, goosenecks, and other lead distribution system piping to control lead in drinking water. The Agency has estimated that there are approximately 4.4 million lead service lines in use in the U.S. and that

about 25 percent of all public water suppliers have at least some lead service lines. The number of lead service lines as a percentage of total service lines in any community with lead services varies from one percent to 80 percent (Chin and Karalekas, 1984). While most cities stopped installing lead services after about 1940, at least one large city (Chicago) continue to require their use until late 1986.

Lead service lines can contribute significantly to lead levels in tap water, especially where water is corrosive. In Karalekas et al. (1976), for example, lead levels in samples from lead service lines (called "early morning samples" in this study) averaged 0.104 mg/l as compared to morning first draw levels (called "standing samples") in those same homes which averaged 0.053 mg/l. Similarly, Pocock (1980) and the U.K. Department of the environment (1982) found an elevation in lead levels in morning first draw samples in homes without interior lead plumbing but with lead service lines (called "communication pipe" in Pocock); these

first draw levels were lower than in homes with interior lead plumbing and higher than in homes without any lead pipes (either as interior plumbing or as service lines). Because lead service lines can raise lead levels at the tap, and for reasons related to system operation and maintenance (e.g., to avoid anticipated pipe failures), several communities around the United States have already begun programs to replace lead service lines.

The studies cited above as well as unpublished data from two other cities (see Tables 8 and 9) indicate that not all houses with lead service lines have high lead levels at the tap, especially where water is relatively non-corrosive. The reasons for this vary. One possible explanation is that over time an insoluble protective coating can build up on the interior surface of the lead pipe, preventing (or reducing) the leaching of lead into the water. The buildup of this film is subject to conditions that can vary from house to house including the age of the plumbing, the occurrence of physical disturbances such as the

ground freezing or nearby road repair, fluctuations in pH or water pressure, and the length and diameter of the lead pipe. Another possible explanation is that the samples taken in some of these studies may not have fully captured the contribution from the lead service line, e.g., if morning first draw samples, rather than service line samples, were taken (morning first draw samples are not a reliable predictor of the contribution from the service line). This can be seen in the Karalekas, et al. (1976) data cited above: the service line samples, which were intended to capture the effect of the lead pipes on tap water, showed the highest lead levels. In the Pocock (1980) data as well, the presence of lead service lines raised the morning first draw lead levels only slightly. Given the available data, EPA cannot currently quantify, on a national basis, the contributions of lead service lines and other lead connections to lead levels at the tap, or the anticipated change in lead levels after corrosion control treatment is in place. EPA solicits data to help clarify this issue.

TABLE 8.—AVERAGE LEAD CONCENTRATION FOR LEAD VS NON-LEAD SERVICE LINES ^{1, 2}

City	Pipe type	pH	Alk ^a	Morning first draw average (Pb in µg/l)	Service line average (Pb in µg/l)	Fully flushed average (Pb in µg/l)	Number of samples	Vol.
Chicago.....	Lead.....	8.3	109	13	15	8	201	500
	Iron.....	8.3	109	3		<3	73	500
Louisville.....	Lead.....	8.6		8	5	3	34	250
	Copper.....	8.4		9	3	2	12	250
St. Louis.....	Lead.....	9.0	50	<1	<1	<1	2	1,000
	Copper.....	9.0	50	4	3	<1	9	1,000

¹ Source: EPA, 1988/h.

² Values are for reported sample sizes.

^a Alk = alkalinity in mg/l as CaCO₃.

TABLE 9.—RANGE OF LEAD CONCENTRATION FOR LEAD VS. NON-LEAD SERVICE LINES ^{1, 2}

City	Pipe type	pH	Alk ^a	Morning first draw average (Pb in µg/l)	Service line average (Pb in µg/l)	Fully flushed average (Pb in µg/l)	Number of samples	Vol.
Chicago.....	Lead.....	8.3	109	<3-85	<3-127	<3-44	201	500
	Iron.....	8.3	109	<3-6		<3	73	500
Louisville.....	Lead.....	8.6		ND-29	ND-15	ND-15	34	250
	Copper.....	8.4		ND-19	ND-7	ND-5	12	250
St. Louis.....	Lead.....	9.0	50	<1	<1	<1	2	1,000
	Copper.....	9.0	50	<1-13	1-10	<1	9	1,000

¹ Source: EPA, 1988/h.

² Values are for reported sample sizes.

^a Alk = alkalinity in mg/l as CaCO₃.

A further complication of the pipe replacement issue is that ownership and/or control of the service line often is split between the public water system and the property owner. Depending on State law or regulations or local ordinances, some public water systems own and/or control service lines and

other connections up to the property line, others own and/or control the service line and other connections up to the building (especially if the water meter is located inside the building), and still others own and/or control the service line and other connections only up to the curb. (See Figure 1 for a

schematic drawing of the parts of the water supply and distribution system.)

EPA believes that, in general, its authority to require replacement of service lines and other connections ends where the water supplier ownership or control of the lines end. EPA has conducted a limited study of some large

cities, which indicates that these water suppliers generally limit maintenance on water pipes to those portions they own (EPA 1987d). However, several cities have authority to enter private property to perform work on water lines under special circumstances (EPA 1988j); in such cases, the property owner is generally billed for the work performed.

Several cities currently conduct programs to accelerate the replacement of portions of the lead services and goosenecks under their control. San Francisco, CA, began a program in the early 1960's, and replaces approximately 11,500 linear feet of service line per year at an average cost of \$40 per linear foot. The service line from the water main to the water meter is replaced with polybutylene, copper, or ductile iron, depending on line diameter. New Haven, CT, has replaced all lead and galvanized steel service lines (from the water main to the meter) and began accelerated replacement of lead gooseneck connections in 1976-77. New Haven has replaced 15,000 of an original 30,000 lead goosenecks to date, at a rate of about 1,000 per year. Akron, OH began replacing lead and galvanized steel service lines from the water main to the curb in 1964, and has replaced about 1,000 service lines per year since then. In all of these cases, the service line replacement was funded by operating revenues paid by the customers. Washington, DC has a program under which they city will replace its portion of lead service lines provided that the building owner replaces his or her portion.

While many studies indicate that lead service connections can contribute to tap water levels of lead, EPA currently has no data to quantify the extent of reductions in lead levels that might be achievable by partial replacement (i.e., by replacing only that portion under the ownership and/or control of the PWS). One study (Britton and Richards, 1980) found temporary increases in lead levels at the tap following the replacement of part of a lead service line with copper piping. As the authors noted, this probably resulted from the dislodgement of the protective coating on the inside of the pipe, possibly aggravated by the application of new lead solder to connect the new pipe, and the occurrence of galvanic corrosion related to the introduction of a dissimilar metal. Because EPA does not have the authority to require the replacement of lead service lines owned and controlled by private property owners, the Agency is concerned that a requirement to replace lead service lines would result in only partial replacement of many

such lines. EPA solicits any available data on the effect of partial and full lead service line replacement programs on lead levels at the tap. EPA also solicits information on the extent of the authority of public water systems over lead service lines and connections under State law and local ordinances.

3. Public Education About Lead in Drinking Water

EPA has conducted public education programs and has found that well designed and implemented programs can be an effective means of reducing public exposures to environmental hazards. Public education programs have effectively changed the knowledge and/or behavior of their audiences. Examples of such programs are the State and EPA radon programs and programs to educate residents near Superfund sites about the degree of hazard presented by improperly disposed chemicals at these sites.

Since 1986 EPA has sponsored a major program to educate the public about the dangers of exposure to radon. Many elements of this program have actually been carried out by State and local governments. The program has included monitoring of homes and other buildings for radon in the air, and development and testing of innovative exposure reduction methods, including both prevention and removal techniques. Information has been conveyed throughout the community through an ongoing program of pamphlets, public service announcements, television specials, public meetings, and other means. As a result of this program, many people have become aware of the effects of exposure to radon on health and have taken steps to determine their exposure and protect themselves.

A second successful public education program deals with health risks associated with specific hazardous waste disposal sites under CERCLA (Superfund). Federal, State, and local governments, together with private parties, provide intensive information to people living or working near hazardous waste sites. Using the methods discussed above, affected persons have learned about the nature of the dangers they may face and have learned appropriate steps to reduce their current and possible future exposures to contaminants at these hazardous waste sites.

All public education programs have two basic elements: the content of the program and the method of delivering the information.

a. *Content of the Program.* An effective public education program for

lead in drinking water includes information about:

(a) The health reasons for concern about lead exposure, including identification of sensitive subpopulations;

(b) Sources of lead exposure (including non-drinking water sources) and a plan to identify the sources of specific problems in individual houses that are identified as having lead levels above a maximum value;

(c) Means of reducing lead exposure from drinking water, including tap flushing and suggestions for modifying water use patterns to conserve water given the benefits of flushing.

b. *Conveyance of Message.* The effectiveness of public education programs varies depending upon how the message is conveyed to the community in general and to key groups in the community. For example, bill enclosures, public service announcements, public meetings, and messages on water bills will vary in effectiveness since they present the message in different ways and to different consumers.

Identification of key groups in the community can be important in improving the effectiveness of public education programs in reducing exposure to lead by targeting them for more intensive public education efforts. Key groups can include residence in areas identified as at risk for high lead levels in drinking water or houses that actually have been tested and found to have high lead levels; schools and other buildings that have a high proportion of children in their population; and institutions that may serve a high proportion of pregnant women.

Finally, the frequency and duration of the various aspects of a public education program can influence its success.

4. Selection of Treatment Technique Requirements for Controlling Corrosion By-Products

In the above discussion, EPA has reviewed three potential methods of reducing lead and copper as corrosion by-products in drinking water: Corrosion control treatment, pipe replacement, and public education. Based on its evaluation of the available information, EPA considers corrosion control and public education to be effective and feasible methods of reducing lead and copper as corrosion by-products in drinking water. Thus, they are both included as requirements of the proposed rule. Lead service line replacement was also considered. EPA believes that in many cases replacement

of lead service lines and connections may reduce the lead levels in tap water. However, there may be temporary risks associated with partial pipe replacement. Because of these potential risks, as well as uncertainty about the effectiveness of partial or complete service line replacement as a final control step after implementation of corrosion control treatment, EPA is not proposing service line replacement as BAT for controlling lead as a corrosion by-product in drinking water. However, as explained below, EPA is requesting comment and data on this subject and is considering adopting pipe replacement as a requirement of the final rule.

E. Proposed Regulation

EPA is proposing an MCL for lead in distributed water of 0.005 mg/l and an MCL for copper in distributed water of 1.3 mg/l. Compliance would be measured at the entry point to the distribution system.

The Agency is also proposing a treatment technique requirement to control lead and copper which enters water as corrosion by-products. The proposed treatment technique consists of optimal corrosion control treatment to minimize lead corrosion, and public education. It would be triggered by three "no-action" levels, as measured in targeted samples: an average lead concentration in targeted samples of less than or equal to 0.010 mg/l, a copper concentration of 1.3 mg/l or less in at least 95 percent of the targeted samples, and pH greater than or equal to 8.0 in at least 95 percent of the targeted samples. If all three levels are met, "no action" would be required; the PWS would be deemed in compliance with the treatment technique. If any of these three levels is not met by a system, the system would be required to install or improve its corrosion control treatment. In addition, if the average lead level of 0.010 mg/l or a fourth "no-action" lead level of 0.020 mg/l or less (in at least 95 percent of the targeted samples taken for compliance) was exceeded, the PWS would be required to conduct a public education program to encourage consumers to reduce their exposures to lead in drinking water.

The Agency is seeking comment on six major alternatives which are permutations of this proposal. First, EPA is considering treating the fourth no-action level, 0.020 mg/l or less of lead in at least 95 percent of the targeted samples, the same as the first three no-action levels. Thus, a system that did not meet this fourth no-action level would be required to install or improve its corrosion control treatment. The second alternative would add an

additional "no-action level" of total alkalinity greater than or equal to 30 mg/l in 95 percent of more samples to trigger treatment. As in the first alternative, a system that did not meet this no-action level would be required to install or improve corrosion control treatment. The third alternative would eliminate the pH no-action level and rely only on lead levels measured at the tap to determine whether corrosion control treatment is required. Under the fourth alternative EPA is considering, a system would be required to replace lead service lines and connections that were found to contribute 0.005 mg/l lead or more to lead levels in tap water even after installation of optimal corrosion control treatment. The fifth alternative under consideration is a two-tier approach to monitoring which could increase the efficiency of sampling and accuracy of determinations regarding whether additional corrosion control treatment was required. This alternative may also reduce the number of samples required of larger public water systems. A sixth alternative EPA is considering would eliminate the MCLs for lead and copper in distributed water.

This section and the following section on monitoring describe each part of the proposal and these alternatives, and explains the rationale for selecting the proposed rule provisions and for considering each alternative. EPA requests comment on the proposal itself, as well as the alternatives. In response to the public comments, EPA may promulgate any of these alternative options or any combination of these options. Persons should, accordingly, comment fully on all these options.

In its July 8, 1987 (52 FR 12876) notice promulgating NPDWRs for eight VOCs, EPA added a definition of a non-transient non-community (NTNC) water system to the general definitions section in 40 CFR §141.2. The definition of a non-transient non-community water system is as follows:

a "non-transient non-community water system" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year.

In that rulemaking, EPA applied the NPDWRs for the VOCs to these NTNC water systems. EPA also stated in that notice its intent to apply future drinking water standards to NTNC water systems. Accordingly, EPA is proposing to apply the NPDWRs for lead and copper proposed in today's notice to NTNC water systems as well as to community water systems. EPA recognizes that some of the provisions of the proposed regulations would not

easily apply to NTNC systems. Therefore, where appropriate, EPA is proposing modified provisions for NTNC water systems to better suit the special circumstances of the NTNC system. Unless otherwise noted, all requirements in this proposal would apply to community water systems and NTNC water suppliers in the same way.

1. Lead and Copper MCLs

Based on the analysis of treatment technologies in Section IV.B.3., above, and an assessment of the PQL in Section V.A., below, EPA is proposing an MCL of 0.005 mg/l for lead in water as the water enters the distribution system. The treatment technologies proposed as BAT in Section IV.B.3., (i.e., ion exchange, reverse osmosis, lime softening, and coagulation/filtration) can reduce lead occurring in source water to 0.005 mg/l at reasonable cost. Based on an analysis of the same treatment technologies, EPA proposes to set an MCL for copper in water entering the distribution system of 1.3 mg/l. The treatment technologies proposed as BAT in Section IV.B.3. are capable of reducing copper found in source water to this level at reasonable cost.

EPA considered making these MCLs applicable to fully flushed water at the tap, rather than to treated water entering the distribution system. However, EPA is concerned that distribution system and household plumbing materials might contribute to fully flushed lead levels at the tap as water moves through the pipes, and tap levels therefore may not reflect the effective application of treatment to reduce lead and copper occurring in source water. Although EPA has few data on such contributions, especially on contributions after application of the corrosion control treatment which would be required by this rule, the available data indicate that plumbing materials can contribute to lead and copper levels in fully flushed samples (EPA, 1988h).

Therefore, EPA is proposing to require that compliance with the MCLs for lead and copper be measured at the entry point(s) to the distribution system. Water suppliers with more than one well or entry point to the distribution system would be required to monitor at each entry point to ensure identification of all sources requiring treatment. Where several wells draw from the same aquifer, States would be allowed to identify wells representative of the aquifer for monitoring if there is no treatment; monitoring of the remaining wells would not be required. States would also be allowed to reduce the

total number of samples by the use of composite samples, described in Section V.C.1. below.

Measuring at the entry point to the distribution system would accurately reflect whether the treatment of the source water was effectively applied. While contributions to the lead and copper content of fully flushed water from plumbing materials in the distribution system may be small, even a contribution of 0.001 mg/l from corrosion could result in a violation of the lead MCL when in fact the source water has been treated to reduce lead levels in the source water to below the MCL. A larger contribution would be required for copper, but the same concern exists. EPA solicits comments on both the proposed approach and the alternative of requiring that the MCLs apply to fully flushed water at the consumer's tap.

To demonstrate compliance with the MCL for lead, water suppliers would be required to monitor lead in water entering the distribution system and maintain the lead level at or below 0.005 mg/l in all samples. To be in compliance with the MCL for copper, water suppliers would be required to monitor copper levels in water entering the distribution system and maintain the copper level at or below 1.3 mg/l in all samples. These requirements would apply to both community water systems and non-transient, non-community water systems. Monitoring would begin no later than the dates specified in Section V.C.1 (depending on system size).

It has been suggested that an MCL for contaminants entering the distribution system is a contradiction in terms because an MCL, by definition, is a standard that must be met at the tap. Proponents of this view argue that the SDWA, the legislative history of the Act, and EPA's own regulations support this interpretation.

The Safe Drinking Water Act defines an MCL as "the maximum permissible level of a contaminant in water which is delivered to any user of a public water system." Section 1401(3). It certainly could be argued that, under this definition, MCLs must be met in water that actually flows from the user's tap. Indeed, the House Report on the bill that eventually became the Safe Drinking Water Act of 1974 states that "[s]ince drinking water regulations are intended to be met at the consumer's tap, the committee anticipates that monitoring would include tap sampling." (H.R. Rep. No. 93-1185, p. 13, 1974). On the other hand, it could be argued that "water which is delivered to any user" refers to water that leaves the part of the

distribution system that is owned or controlled by the public water system and enters the portion of the distribution system that is owned or controlled by the user, e.g., homeowner. This interpretation would be consistent with the definition of "public water system" in section 1401(4) of the Act which, as discussed earlier, does not include distribution facilities that are not owned or controlled by the public water system.

In determining where MCLs apply, EPA's regulations are not conclusive. In 40 CFR 141.2(c), EPA defines "maximum contaminant level" as:

the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

The "free flowing outlet of the ultimate consumer of a public water system" apparently refers to the user's tap. Under this interpretation, all MCLs, except the MCL for turbidity, apply at the tap. However, many of the NPDWRs the Agency has promulgated appear inconsistent with this definition because they do not require monitoring, and therefore compliance, at the user's tap. For instance, the NPDWR for coliform bacteria requires that "samples * * * be taken at points which are representative of the conditions within the distribution system." 40 CFR 141.21(a). While this provision does not preclude sampling at the consumer's tap, it does not require it. Some NPDWRs actually preclude compliance monitoring at the tap. For instance, in 40 CFR 141.24(g)(1), the NPDWRs for VOCs that EPA promulgated in 1987 state that "[g]round water systems shall sample at points of entry to the distribution system representative of each well." Also, the NPDWR for fluoride requires sampling at the entry points to the distribution system. 40 CFR 141.23(g)(1). Other NPDWRs are silent; for instance, most of the NPDWRs for inorganic contaminants (other than fluoride) do not specify the sampling (or compliance) point. See 40 CFR 141.23.

Of course, for contaminants other than corrosion byproducts, sampling at the tap is not critical since water leaving a treatment plant is generally expected to remain consistent in quality throughout the distribution system, including the portion owned or controlled by the consumer. In fact, for

some contaminants, the level at the tap may even be lower than the level at the entry point to the distribution system because of dilution (e.g., mixing of sources) or volatilization of contaminants from water.

Thus, EPA's regulatory definition of MCL arguably is inconsistent with both the statutory definitions of "MCL" and "public water system" and the monitoring requirements for many current MCLs. EPA believes it is important to clarify that, for all contaminants regulated under the Safe Drinking Water Act, the point of compliance is defined by the monitoring requirements of each NPDWR. Therefore, in this notice, EPA is proposing to amend the definition of "maximum contaminant level" to match the statutory definition. Then, for each NPDWR that specifies an MCL, the Agency will specify the monitoring requirements, including the sampling locations, which will in turn define the point of compliance. In the case of the lead and copper MCLs, therefore, the sampling point and point of compliance would be the entry point to the distribution system. While these levels may not necessarily be the "maximum levels delivered to any user," because lead and/or copper levels will probably increase from corrosion within the distribution system, these MCLs, measured as specified in the proposed rule, (1) would indicate whether the treatment for lead and copper in source water was effective, and (2) assess the minimum lead and copper levels that can occur at the tap.

2. Treatment Requirement for Lead and Copper as Corrosion By-Products

The treatment technique required by this rule consists of optimal corrosion control treatment (to minimize lead and copper leaching) and public education (to reduce exposure to lead). Systems could comply with the treatment technique either by installing treatment and conducting a public education program, or by meeting specified "no-action levels" for parameters of concern. Thus, under this proposal, systems that meet specified levels for lead, copper, and pH, i.e., no-action levels, would be deemed in compliance with the treatment technique requirement and would not be required to install or improve treatment of their water. Systems that do not meet the no-action levels would be required to either improve or install corrosion control treatment adequate to meet the no-action levels or else demonstrate that they have optimized treatment, i.e., that the delivered water is minimally

corrosive towards lead. In addition, if one or both lead no-action levels are exceeded, the system would be required to conduct a public education program.

EPA is proposing no-action levels as a screen to limit the total number of public water systems which would need to make a detailed demonstration that they have optimized corrosion control treatment. These limits are called "no-action levels" because no further actions are required if they are met. Thus, under this proposal, a system that meets the no-action levels, i.e., 95 percent of samples at the tap with pH 8, lead levels at the tap of 0.010 mg/l or below as an average, and 95 percent of copper levels at the tap of 1.3 mg/l or below, would be considered to have minimally corrosive water and would be considered in compliance with the corrosion control portion of the treatment technique

requirement. Such a system would not be required to perform a detailed demonstration that it had installed optimal corrosion control treatment. A system that meets the average of 0.010 mg/l of lead and 95 percent or more of its samples are less than or equal to 0.020 mg/l lead would be considered to be in compliance with the public education portion of the treatment technique requirement.

To determine whether it meets the no-action levels, the water system would first take morning first draw and service connection samples from kitchen taps in targeted residences as described in Section V.B.2. below. For systems serving more than 3,300 people, the first round of monitoring (four quarters) would be required to be completed during the 15 months after promulgation of the final rule. Water suppliers serving

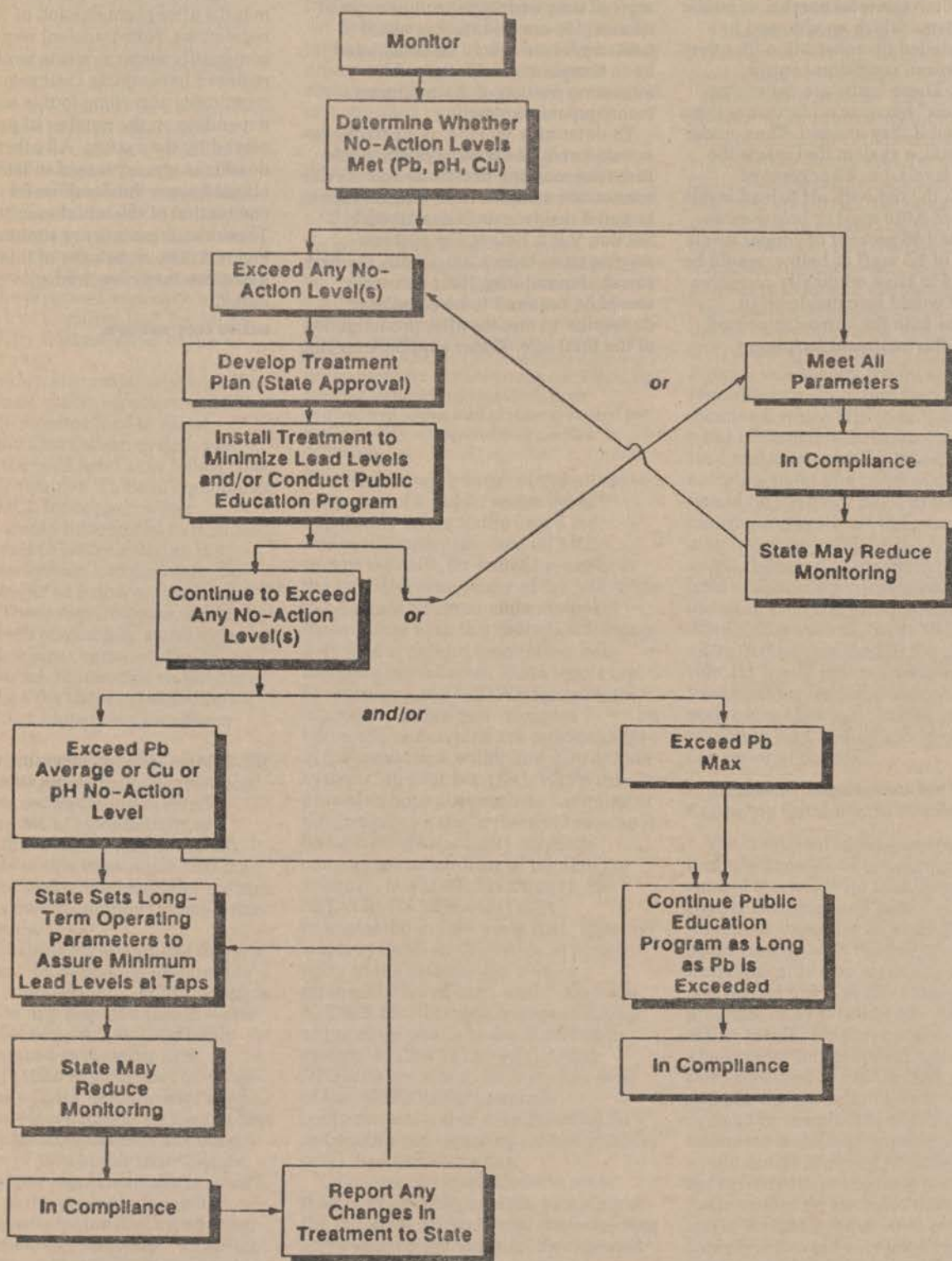
500 to 3,300 people would have 27 months from promulgation to complete the initial monitoring. Systems serving fewer than 500 people would be required to complete the initial monitoring 39 months after promulgation of the final regulations. Non-transient non-community water systems would be required to complete their required monitoring according to this schedule, depending on the number of people served by the system. All other time deadlines are expressed in terms of time elapsed since the deadline for completion of the initial monitoring. These requirements are summarized in Figure 2. The remainder of this section describes these requirements in more detail.

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Figure 2

Treatment Technique Requirement



Systems failing to meet the no-action levels by the deadline for completion of the initial monitoring would be required to install corrosion control treatment, and/or public education, depending on which of the no-action levels is exceeded. Corrosion control treatment and public education would be required to be implemented according to a State-approved or issued treatment plan. The treatment plan would contain specific steps that each water supplier would be required to take to ensure that either the no-action levels are met, or optimal corrosion control treatment and/or public education are implemented, on a specified schedule. All systems would be required to complete installation of any treatment required by the treatment plan within three years after approval of the plan.

Water systems serving 3,300 or more people and failing to meet anyone of the no-action levels would be required to apply for approval of a treatment plan by submitting a proposed treatment plan to the State within one year after the deadline for completion of the initial monitoring. These systems would be required to include in their treatment plan the following steps: (1) Design and implementation of pipe loop, laboratory, pilot scale and/or field studies; (2) analysis of the data generated in these studies to estimate optimal operating conditions to minimize corrosion of lead; (3) installation of the treatment in the entire water supply system; (4) monitoring to evaluate the effectiveness of the treatment; (5) additional adjustment of the treatment if no-action levels continues to be exceeded; and (6) if, after installation and adjustment of treatment, any of the no-action levels continue to be exceeded, submission to the State of all data collected and an analysis demonstrating that the corrosion control treatment being applied was optimal, i.e., that lead levels were minimized.

The State would be required to review the system's analysis and determine whether treatment was optimal. Once the State determines that treatment is optimal, the State would also specify required operating parameters and values (such as pH, total alkalinity, or corrosion inhibitor dose rate or residual) to ensure that optimal treatment continues. These operating parameters may vary by season to account for seasonal variations in water corrosivity. States would be expected to periodically review and revise the specified operating parameters if long-term monitoring shows increasing average lead levels, or that different values for

the specified parameters result in lower lead levels.

Water systems serving fewer than 3,300 people would be required to apply to the State for a treatment plan if any of the no-action levels is exceeded at the end of the initial monitoring period. Systems would be required to submit or apply for the plan within one year after the close of the initial monitoring period. States would specify the required corrosion control treatment in the treatment plans for these systems. The treatment plans would include a schedule for completion of Steps 3-6 described above for systems serving more than 3,300 persons. States would also specify final operating parameters for these systems after treatment is applied and follow-up monitoring conducted. EPA is proposing that States specify the appropriate treatment for these systems because most smaller systems are unlikely to have the resources and expertise necessary for determining what corrosion control treatment is appropriate. However, systems that wish to develop and submit their own treatment plan rather than request one from the State are encouraged to do so.

a. Corrosion Control—i. No-Action Levels.

As described above, if pH is 8.0 or greater (in 95 percent of targeted samples), lead levels in targeted samples have an arithmetic average of 0.010 mg/l or lower, the maximum lead level in 95 percent of targeted samples does not exceed 0.002 mg/l, and the copper levels in 95 percent of targeted samples does not exceed 1.3 mg/l, the system would be deemed in compliance with the treatment technique requirement and need not install or improve corrosion control treatment.

The value of 0.010 mg/l as an arithmetic average for lead levels is based on engineering considerations. EPA reviewed the available literature and data on lead levels in standing samples (water standing in the pipes 8-18 hours), compared with the various plumbing materials water quality factors (particularly pH and alkalinity) present. Analysis of these data indicates that, for those water suppliers having water with pH 8 and total alkalinity greater than 30 mg/l, even in the presence of some lead plumbing materials, average tap lead levels of 0.010 mg/l were achieved.

Systems with no lead problem or only a small lead problem (e.g., no lead service lines and few houses with new lead solder) would be able to meet the average of 0.010 mg/l relatively easily, especially if they meet the no-action level for pH. Some systems may have

more difficulty consistently meeting the average. For example, as described above, Boston, MA and Bennington, VT have had serious lead problems in the past due to large numbers of lead service lines and residences with interior lead plumbing combined with water which was extremely corrosive before treatment, and thus have instituted corrosion control programs aimed at reducing lead to below 0.050 mg/l. Both raised their pH to above 8.0 at the treatment plant, and Bennington raised its raised their alkalinity some. Because alkalinity levels remain low, pH levels are not maintained throughout the system. Although both communities achieved substantial reductions in morning first draw lead levels, and met their own program goals of reducing tap lead levels below 0.050 mg/l, neither is meeting the 0.010 mg/l target as an average. However, the treatments developed for these cities may not be optimal for their water; additional reductions are likely to be possible.

The proposed treatment technique requirement would include a no-action level for copper equal to the MCLG, 1.3 mg/l, as a 95th percentile of the data in morning first draw water. This level is based on a review of the literature and data on copper levels in morning first draw samples. These data indicate that with good corrosion control, particularly pH adjustment, copper levels in morning first draw water can be consistently reduced to the MCLG or lower (EPA, 1988h).

ii. Treatment Plan Requirements. If a water supplier did not meet one or more no-action levels, it would be required to submit or apply for (depending on their size) a treatment plan. The plan would be designed to result in having the system meet the no-action levels or, if the system did not meet the pH and/or average lead level after applying optimal treatment, demonstrate that lead levels in tap water had been minimized. (The treatment plan would also include public education requirements if the average or maximum lead level is not met. This aspect of the treatment plan is discussed in a later section.) Systems must submit or apply for a treatment plan within one year after the end of the initial monitoring period showing that any no-action level has been missed.

The contents of the plan, including items such as specific schedules, studies, and installation of treatment, would become effective and enforceable upon approval or issuance of the plan by the State. Factors affecting the scope and detail necessary for successful optimization showings include: Local

water chemistry conditions, size and complexity of the distribution system, and the presence of other water treatments which can affect the design and effectiveness of potential corrosion control measures. Compliance would be determined based on whether a system had fulfilled each step of the approved plan on time and in a manner meeting minimum Federal and State criteria.

After the system has taken all the steps required by the plan, the State would evaluate the results and specify operating conditions for future compliance. The system would be required to operate in the manner specified by the State (either meeting the no-action levels or operating under other conditions approved by the State that minimize the corrosivity of the water towards lead) to remain in compliance in future monitoring periods. Failure to meet the no-action levels or demonstrate that treatment is optimal would be a violation of the treatment technique requirement. Systems that meet all the no-action levels during the initial monitoring period, but exceed one or more of them during a subsequent monitoring period, would have one year after their monitoring data showed an exceedance of any no-action level to either meet the no-action level or submit or apply for a treatment plan.

(A) Large and Medium Size Systems. Systems serving more than 3,300 persons would be required to submit a proposed plan which describes the system's approach to obtaining the information necessary to install or improve treatment sufficient to achieve the no-action levels or to demonstrate that corrosion control treatment has minimized lead levels at the tap due to corrosion. EPA expects that water suppliers facing situations more complicated than average, such as large systems, would need to perform more elaborate studies to determine optimal operating conditions. A simpler than average evaluation may suffice in cases where the choice of appropriate corrosion control is fairly obvious. The treatment plan for these systems would include the following specific steps and a schedule for completing each step:

Step 1: Pipe loop, laboratory, pilot scale studies, and/or field studies demonstrating reductions in lead and copper levels in actual or simulated standing samples corresponding to application of optimal corrosion control treatment.

To identify and demonstrate to the State that water is minimally corrosive towards lead or achieve the no-action levels, water suppliers would be required to conduct pipe loop, laboratory, pilot-scale, and/or field

studies investigating the effects of changes in corrosion control treatment and corresponding changes in lead dissolution. These studies should include investigations of the effects of varying pH over the range of 8.0 to 10.0, and at several total alkalinity levels.

Those ground water systems with pH below 8.0 that are saturated or nearly saturated with CaCO_3 , and that wish to continue operating in the pH range, should demonstrate in the laboratory that precipitation problems could occur if pH adjustment is implemented. If these bench-scale studies indicate that CaCO_3 would precipitate at elevated pH, then these systems should concentrate their optimization analysis on the use of corrosion inhibitors such as zinc orthophosphate.

In addition, systems which prefer to operate outside the required pH range because of other water treatment considerations (such as preference for using corrosion inhibitors, which function better at lower pH, e.g., pH < 8.0, so formation of trihalomethanes and other disinfection by-products is less likely) also could apply for treatment plan approval. Systems that want to operate outside the minimum pH must also describe use of any corrosion inhibitors which provide optimum protection outside the preferred pH range, and show in pipe loop or other studies approved by the State in the treatment plan that lead levels under these conditions are higher than lead levels which result under the water supplier's preferred operating conditions. The supplier must test a range of corrosion inhibitor doses and sufficient alternative operating conditions to show that the lead levels cannot be lowered using other treatments such as alternative corrosion inhibitors.

If a pipe loop study is used to evaluate different treatments, then the pipes used for the study must be representative of the plumbing in the system that is causing the lead problem. Lead pipes would be required if lead service connections are used within the system. Lead-soldered copper joints must be used if the lead problem is the result of corrosion of these joints within the system. Because of differences in conditions between residences and pipe loops, the loops will generally not predict the precise treatment necessary and resultant lead levels for a system. However, they will accurately predict trends and provide data to plan a treatment strategy and to design and test pilot and field scale studies, as part of the treatment scale-up and adjustment.

Step 2: Analysis of the data generated in Step 1 above to identify water quality conditions under which lead levels in morning first draw and service connection samples (i.e., standing samples) are expected to be minimized.

The purpose of the studies conducted under the treatment plan is to identify water quality conditions under which corrosion of lead into tap water is minimized and to demonstrate that lead levels in water have been minimized under the operating conditions for which the water supplier seeks approval (if it cannot meet the no-action levels after installing or improving treatment). The results of the studies should clearly and unambiguously show the relationship between minimal water lead content and the proposed operating conditions. That is, data gathered under both the operating conditions identified by the water supplier as optimal and alternative conditions would be required. The State would evaluate the data to assure that the chosen conditions provide the lowest possible lead levels.

In conducting these studies, there may be a period before the full effect of the pH adjustment is expected to be realized. The system would analyze standing samples from the pipe loop or other experimental set up for lead during this period to assess the effectiveness of the pH adjustment. Those systems that do not meet the average lead level at any of the pHs within the specified range (i.e., 8-10) would then analyze the generated data to determine the optimum pH, i.e., the pH which results in the lowest lead levels. The system would then adjust the pH to the optimum pH and establish permanent operating levels for pH and any other parameters specified by the State.

For systems which choose to investigate corrosion inhibitors, lead levels resulting from a range of doses would be required, and would be compared with the results of studies using pH adjustment above.

Based on these analyses, a treatment strategy and estimated operating parameters for minimizing corrosivity of water in the whole system would be identified.

Step 3: Installation and operation of corrosion control treatment in the water system as a whole.

EPA anticipates that most of the overall demonstration of optimal treatment would be completed in the laboratory or in a pilot plant as part of Step 1. Only after a PWS has determined the general requirements for treatment would EPA expect it to apply

the treatment in the distribution system. EPA believes this sequential process is important to assure that protective coatings are not accidentally disturbed during the trials, and to allow systems to make cost-efficient decisions regarding treatment strategies and the installation of new equipment.

The system would be required to scale up its laboratory treatment to install it in the system as a whole within three years of approval of the treatment plan. The goal of the scale-up would be to identify full scale treatment that would achieve in the system as a whole the operating parameters identified in Step 2 above as likely optimal operating parameters, or to meet the no-action levels.

Step 4: Monitoring to determine the efficacy of the treatment as installed.

The treatment plan must require monitoring of the full-scale implementation of the operating conditions determined from the laboratory and pilot studies. Monitoring would be required at the same sites used to evaluate compliance with the no-action levels.

Systems adjusting pH (and alkalinity) may have a several-month stabilization period before the full effect of the corrosion control treatment is realized. The pH level will stabilize first, while lead levels may continue to fall as a film builds up on the inside of the pipes. Systems should sample at the targeted sites during this period to determine the effectiveness of the corrosion control treatment. This monitoring should show lead levels decreasing and stabilizing over time as the treatment takes effect. Once the system has stabilized, samples from the targeted sites would be analyzed for lead to demonstrate the effectiveness of the treatment at full scale.

Step 5: Adjustment of the installed treatment as necessary to ensure that lead levels are minimized.

Once the general treatment steps are determined and installed to treat the full system to meet the water quality parameters identified, EPA expects that most water suppliers would need to fine-tune the treatment to account for normal differences between laboratory or pilot plant designs and full scale operations. The installed treatment must also be adjusted for seasonal variations in water quality which can greatly affect the corrosivity of the water. Water suppliers must adjust the installed treatment as necessary to account for differences between projections based on laboratory or pilot plant data and full-scale operations by performing minor adjustments or pH or other

parameters to try to reduce the lead levels.

If, upon implementation of the operating parameters identified by the system in the laboratory studies, a system meets the no-action levels for four consecutive quarters, then the system has adjusted its corrosion control treatment sufficiently and no further adjustment would be required.

Note that because tap water must meet the proposed no-action levels or be shown to be minimally corrosive towards lead, water suppliers would be required to adjust corrosion control treatment to account for any blending of water from different sources. There can be significant changes in water chemistry associated with blending. Therefore, suppliers must demonstrate that each blended product meets the requirements of the regulations. A related issue is that of the division of responsibility for treatment among wholesalers and retailers of water. Retailers may add or blend sources of water provided by several wholesalers. Therefore, EPA is proposing to place ultimate responsibility for the degree of corrosivity of the water on the retailers. EPA solicits comment on this approach and requests data to support any alternative approaches suggested.

Step 6: If any no-action levels are still exceeded after installing or improving treatment and making all adjustments, systems must submit to the State an analysis of all treatment and resulting lead levels demonstrating that treatment is optimal and lead levels are minimized for the specific system.

This report would include a compilation of all the data generated in the course of study and treatment implementation. It must clearly show that additional treatment would not reduce lead levels further. Test results outside the operating parameters identified as optimal must be included. Once the State accepts the analysis and approves a set of operating conditions as optimal, those conditions would become the required operating parameters for that system for the future.

Suppliers serving more than 3,300 persons that wish to change other concurrent treatments that might reduce the effectiveness of the approved corrosion control treatment, or experience significant change in the population served or in the extent of the distribution system, would be required to submit to the State for approval new corrosion control data from studies which reflected the new conditions under which the supplier wishes to operate. These conditions must show

that corrosion of lead continues to be minimized.

(B) *Small Systems.* Systems serving fewer than 3,300 persons that do not meet the no-action levels simply would be required to apply to the State for a treatment plan. States would determine what type of corrosion control treatment would result in the minimization of lead levels at the tap and specify this treatment in the plan. (Systems that preferred to develop and submit their own treatment plan would be allowed to do so.) The treatment plan would contain the same performance standard as that required from larger systems—installation of corrosion control treatment to either meet the no-action levels or minimize the corrosivity of tap water towards lead, and an effective program of public education if one or both of the no-action levels are exceeded after treatment. The activities required of small systems to meet this performance standard would be tailored to their ability to perform detailed analyses of alternative corrosion control treatments and to conduct public education programs. For example, rather than conducting pipe loop, laboratory, pilot-scale, or field studies to determine optimal treatment, the State would specify the type of treatment small systems are to install. The State would be responsible for determining what treatment is most likely to be effective in each system. Once the treatment is designated, the responsibilities of small systems would be very similar to those of larger systems. The systems would install and fine-tune the full scale treatment, monitor tap water to assure treatment effectiveness, and continue to meet the no-action levels (if achieved by the specified treatment) or to operate under conditions approved by the State.

EPA recognizes that some corrosion treatments may be difficult to implement for small water suppliers without full-time personnel to monitor and maintain operations. EPA has therefore identified technologies which may be appropriate for the smallest water suppliers, i.e., those serving fewer than 500 persons. Soda ash (sodium carbonate) may be appropriate for some of these small systems. Other systems may require treatment with lower maintenance requirements; limestone bed contactors (calcite contactors) provide a possible alternative. In a limestone contactor, water is closed to the atmosphere and flows through and dissolves a packed bed of crushed limestone or another source of calcium carbonate. Such devices can reduce lead levels in morning first draw drinking water by five-fold and copper by more than 50-

fold (EPA, 1987d). These devices need relatively low maintenance (although they require occasional backwashing), are effective and relatively low in cost, and provide a viable treatment alternative for many small systems. However, there are a few limitations associated with calcite contactors. First, this technology may not be effective for systems with source water that is already saturated with CaCO_3 . Second, systems that do use this treatment technology may not meet the no-action level for pH, especially if the source water has low pH and low total alkalinity. This treatment technology may need to be coupled with another treatment technology to achieve the no-action levels for both pH and lead. Dolomite contactors may provide treatment similar to that of calcite contactors. While water suppliers may use any treatment to minimize water corrosivity, EPA believes the treatment methods described above may be more practical for the smallest systems, and encourages States to consider them seriously in developing treatment plans for these PWSs.

The treatment plan for systems serving 3,300 or fewer persons would include a schedule for installing and adjusting the treatment designated by the State, and would include the following specific steps, which correspond to Steps (3)-(5) for larger systems (described above):

Step 1: Installation and operation of the corrosion control treatment required by the State in the water system as a whole, within three years of issuance of the treatment plan.

Step 2: Monitoring to determine the efficacy of the treatment as installed.

Step 3: Adjustment of the installed treatment as necessary to ensure that lead levels are minimized.

Step 4: If one or more no-action levels are still exceeded after installation and adjustment of treatment by the system, the State would analyze all treatment and resulting lead levels to determine whether treatment is optimal, i.e., lead levels are minimized, for the specific system. Monitoring data supporting the conclusion that treatment is optimal must be submitted to the State.

Suppliers serving fewer than 3,300 persons that wish to change other concurrent treatments that might reduce the effectiveness of the approved corrosion control treatment, or experience significant change in the population served or in the extent of the distribution system, would be required to notify the State of the proposed changes. States may disapprove the changes and require modifications

necessary to preserve the minimal corrosivity of the water.

b. Public Education. Under this proposal, those water suppliers (of all sizes) exceeding one or both of the no-action levels for lead (either the average or the maximum) would be required to conduct a public education program to reduce exposure to lead. The public education program would be a part of the treatment plan. Public education would begin as soon as the State approves or issues the treatment plan which includes public education program. States could approve or issue a treatment plan in two steps to allow the public education programs to begin as quickly as possible. In these cases, the State would approve the part of the treatment plan that contains the public education program first, without waiting for final analysis and approval of the corrosion control portion. Two-part approval would be especially useful when the corrosion control laboratory work and scale-up analysis is complicated.

The proposed public education program differs both from the general public notification requirements and the special lead public notification requirements under sections 1414 and 1417 of the Safe Drinking Water Act (see 52 FR 41534, October 28, 1987). First, the public education program would be an ongoing requirement of the NPDWR for lead and copper, for as long as one or both no-action level is exceeded, as opposed to the special lead notification requirement, which is basically a one-time notice. Second, the public education program under this proposal would be required to include intensive interaction between the PWS and its customers to educate them about lead in drinking water, whereas the general public notification program is passive; it simply notifies customers of violations. As explained in Section III, above, excess levels of lead in drinking water supplies can pose a risk to public health. A well designed and executed public education program can induce public water system customers to voluntarily modify their water use behavior, mitigating risks that may result from lead leaching into drinking water.

Water suppliers would be required to design public education programs to meet three performance standards, one regarding program content, a second regarding program delivery, and a third regarding program evaluation, as described below.

i. Program Content. The public education program would include information on health reasons for concern about lead exposure, including, in qualitative and quantitative terms,

information on specific potential health effects associated with excess blood lead levels and the possible contribution of drinking water to them. As described in detail earlier, these effects include interference with heme synthesis, anemia, kidney damage, impaired reproductive function and fetal effects, interference with vitamin D metabolism, impaired cognitive performance (as measured by IQ tests, performance in school, and other means), delayed physical and neurological development, and elevations in blood pressure (EPA, 1986b). Also, the consumer would be advised that the risks associated with lead in drinking water may be aggravated by exposure to lead from other sources. Other sources include lead from paint chips or paint dust, occupational and home hobby exposures (e.g., smelting, electronics), inhalation of airborne lead, and ingestion of lead in food, especially lead that leaches into food from lead-soldered containers.

Besides identifying the nature of the problem associated with lead in drinking water, the public education program would be required to provide information that the consumer may use to evaluate the probability of excess levels of lead in his or her own household water supply. This information must include the potential for excess lead levels in the water as the water leaves the water supplier and the potential for further increases in the lead levels as a result of corrosion of water supply system components. In addition, the public education program must advise consumers to examine the service line, pipes, and soldered joints in their homes for lead, and faucets and other fixtures for brass, which may commonly contain lead; how to have their water analyzed by a commercial laboratory to determine the lead content; and to contact the PWS for additional information. The program must also include specific information on the banning of materials containing lead for use in drinking water systems. The PWS should be prepared to respond to public inquiries on any issues related to lead in drinking water. EPA solicits comment on additional information that the public education program should include.

The public education program would be required to advise consumers of the actions that may be taken to immediately reduce exposure to lead levels in drinking water that exceed the maximum no-action level, i.e., 0.020 mg/l. These actions include: Non-wasteful flushing of taps (such as dishwashing) before any water from a tap is

consumed or used for any type of cooking or other food preparation including preparation of baby formula; using only cold water for drinking or the preparation of any food or formula; possibly replacing portion of the service line owned by the consumer or landlord if it is made of lead and is contributing significant amounts of lead to the drinking water; ensuring that all plumbing repair work is performed using lead-free solder (explaining that the use of lead solder in drinking water systems is illegal); and providing an electrical ground for household wiring other than the household plumbing system if permitted by local building and electrical codes. The Agency invites comments on the effectiveness of these or any other actions that may be used to effect an immediate reduction in exposure to drinking water lead.

The public education program would require the identification of any actions already taken by any official parties within the community to evaluate, quantify, and/or reduce the levels of lead in drinking water and must publicize the results of compliance and other monitoring for lead (including results of any monitoring arranged by the PWS at the request of a consumer, as described below).

ii. *Program Delivery.* The delivery of the public education program is defined by three factors: The audience, the media used to deliver the program, and the frequency and duration with which the program is delivered.

EPA believes that often it would be appropriate to target the education program to specific segments of the public. For instance, residences with known high lead levels, lead service lines, or lead solder less than five years old would be targeted. However, if many or nearly all of the residences are at high risk, then the program should be conducted community-wide.

The Agency expects many systems already have much information regarding plumbing materials in the distribution system and in homes. Under 40 CFR 141.42(d) systems were required to identify whether lead from pipe, solder, caulking, interior lining of distribution mains, alloys and home plumbing was present, and report the results to the States by 1983. Systems are strongly encouraged to use the results of this identification to assist in the estimation of the prevalence of high risk houses and to assist the targeting of public education programs to those areas of the community most likely to have a large proportion of residences with high lead levels in their water.

Public water systems also would be required to consider whether it is

appropriate to target customers on the basis of traits other than geographic location and household plumbing type. For instance, available data indicate that children and developing fetuses are more susceptible to the effects of lead in drinking water than adults are. Therefore, public water systems could target programs to customers that are associated with children and pregnant women. These customers include families, child day care providers, schools, and hospitals. Systems could also target customers with other traits or characteristics that are known to correlate with sensitivity to elevated levels of lead in drinking water supplies such as persons having occupational or other high environmental exposure, e.g., people working in or living near lead smelters. In addition, bilingual information would be required to be disseminated to non-English speaking portions of the targeted population.

As a part of the public education program, EPA is proposing to require that water suppliers offer a program of extended monitoring, beyond the compliance monitoring requirements. The goal of the extended monitoring is to allow all customers to easily determine lead levels and sources in their own household water, especially in cases where the household was not among the residences chosen for compliance monitoring. EPA expects this provision to increase substantially the effectiveness of the public education program in reducing exposure to lead in drinking water.

Under the extended monitoring requirement, water suppliers would be required to offer all customers the opportunity to have household water tested for lead. The public water supplier would not be required to provide this service for free, but would be allowed to pass the costs of gathering and analyzing the samples on to the customers who elected to participate in the program. The supplier itself could gather, analyze, and report the results to the customer, or the supplier could make arrangements with any certified laboratory to provide the analyses to the customer. In this way, customers would gain easy access to quality water sampling services, and not be subjected to repeated trial-and-error in finding reasonably priced, qualified sampling services. At the same time, the public water supplier could minimize its burden in providing the sampling services by making arrangements with an outside laboratory.

EPA strongly recommends that water suppliers assist customers in identifying the sources of high water lead levels when they are found. The supplier could

advise customers to collect samples representative of water that has stood in the service line overnight and a fully flushed sample from the tap. Comparison of the service line sample with the fully flushed sample would allow the customer to identify the source of elevated water lead levels and to take appropriate steps to effectively limit further exposure. For example, if the service line sample shows elevated lead levels, a lead service line may be present. The customer would then be able to determine the value of service line replacement as a means of reducing exposure.

If the alternative of having the public water supply remove lead service lines that it owns and/or controls and offer to remove the remainder for the customer at cost (as discussed below) is adopted, these additional samples would enable suppliers to determine which service lines must be replaced. If the fully flushed sample shows elevated lead levels, this would indicate that the lead is entering the house from the water supply either in the distributed water leaving the plant or as a result of corrosion of pipes owned or under the control of the water supplier. If only the morning first draw sample showed elevated lead levels, the customer could be fairly confident that the lead was originating within his/her residence.

EPA believes that the appropriate medium for public education and schedule for delivery of a public education program are largely a function of the target population. Thus, under this proposal, systems would be required to tailor the form of delivery of the public education program to the nature and size of the target population. For instance, if the target is all residents of a large city, a radio or television Public Service Announcement (PSA) would be appropriate. Conversely, if the target is all residents of a single neighborhood or small town, a public meeting in the neighborhood school would be appropriate. Some other possible methods for public education include preparation of pamphlets or brochures for mass distribution and setting up local telephone hotlines (if used in conjunction with other education methods). The severity of the high lead levels is another factor systems should consider in determining the appropriate medium of education and intensity of the program.

Non-transient non-community water systems serve different populations than community water systems, and thus have different public education requirements. Instead of the requirements described above, NTNC

water systems would be required to take the following actions for the duration of the period during which public education is required: (1) Publicly post informational posters in a prominent place; (2) hold at least one public meeting annually to educate water consumers about lead in drinking water and to answer questions about the subject; and (3) distribute brief informational pamphlets on lead in drinking water at least quarterly.

Public water systems serving more than 3,300 persons would be required to submit the proposed content of the public education program, as well as the manner in which the system would implement it, to the State for review and approval before implementation as a part of the treatment plan. In order to speed implementation of public education, States could approve the part of the treatment plan which covers public education before approving the rest of the treatment plan.

As with public notification requirements, public education programs are the responsibility of the water supplier. However, recognizing that not all systems would have the expertise to conduct such a program in an effective manner, EPA encourages systems to develop joint agreements with State or local public health agencies which have experience in presenting information on health hazards to the public. EPA also encourages systems to coordinate their activities with other local or State programs designed to reduce exposure to lead. For example, local childhood lead screening programs may include complementary public education activities.

Under this proposal, a public education program would include a series of events. For example, a single effort could include several public meetings, a series of PSAs, and a mailing of pamphlets. This series of events could occur over a period of time (e.g., several weeks). The public education program, consisting of each of its individual events, would be required to occur at the rate of four times per year for as long as the system is required to conduct a public education program (i.e., as long as one of the two lead no-action levels is exceeded). For example, a note could be placed on each water bill that says "Are you aware of the possible effects of lead in your drinking water? You should be. Contact _____ for more information."

iii. *Program Evaluation.* Under this proposal, a water system which serves more than 10,000 customers and conducts a public education program would be required to evaluate the

program, within 12 months after the program is undertaken, to determine the extent to which it has been effective. The system must show that consumers have knowledge about lead in drinking water. The evaluation would consist of a survey of customers to determine whether they had acquired useful information that enabled them to reduce their exposures to lead in drinking water. Based on this evaluation, the system would determine if and how the program would be modified to increase the program's effectiveness if modification is determined by the State to be necessary to ensure the program's continued effectiveness.

3. Alternatives to the Proposed Treatment Technique

The SDWA requires EPA to set NPDWRs as close to the MCLG as is feasible. EPA believes the proposed rule meets this standard and also is protective of public health. However, EPA is considering several alternatives in addition to the proposed rule. They are discussed in detail below. EPA may decide to promulgate a rule which incorporates any one or more of these alternatives. For example, EPA may retain the average lead no-action level and eliminate the pH no-action level, and delete the MCL for lead in distributed water. Alternatively, EPA may modify the proposal by having the maximum lead no-action level trigger treatment, requiring replacement of those lead service connections which contribute significant amounts of lead to tap water, and/or adopt an alternative approach to monitoring. Accordingly, the Agency especially requests comments on each of these alternative approaches and combinations of alternatives.

a. *Use of Maximum Lead No-Action Level to Trigger Treatment.* EPA is considering an alternative to the proposal which would likely result in lead levels in water somewhat closer to the proposed goal of zero. This alternative is similar to the proposal except that corrosion control treatment in addition to public education would be triggered if the lead level in more than 5 percent of the samples exceeded 0.020 mg/l. Systems that did not meet this additional no-action level would be required to reduce the corrosivity of water until it no longer exceeded this level or demonstrated to the State that it had minimized the corrosivity of its water, in addition to conducting public education. (Under the proposed rule, systems failing to comply with the no-action level of 0.020 mg/l or less in 95 percent or more of samples would be

subject to the public education requirement only.)

EPA expects that some systems that meet the average lead no-action level would not be able to meet the maximum. Thus, more water suppliers would be required to install or improve corrosion control treatment, and to demonstrate to the States that the treatment they had installed resulted in compliance with the no-action levels or was optimal. Two groups of water suppliers would be affected in this way. Some water suppliers that would meet the proposed no-action level average of 0.010 mg/l without any treatment or additional treatment (beyond that already in place) may fail to meet the "maximum" of 0.020 mg/l. In addition, water suppliers that would already be required under the proposal to improve water treatment to meet the average of 0.010 mg/l might have to improve their treatment more if they must try to meet both the average and the "maximum" of 0.020 mg/l. If they could not meet both levels, they would be required to demonstrate that the water is minimally corrosive. EPA is unable to precisely estimate the increased number of water suppliers that would be affected but it is likely to be several thousand.

Since more systems would be treating their water to make it less corrosive than under the proposed rule, more people would consume water with less lead than under the proposals (although precise estimates of these reductions are not available). EPA seeks comment on this alternative because this alternative would result in water lead levels closer to the MCLG of zero, thus reducing consumers' exposure to lead more than the approach proposed today. This reduced exposure would result in some additional health benefits with potential theoretical benefits under this alternative that could be substantial. However, EPA is concerned that many more water suppliers may have to demonstrate to the State that they have optimized corrosion control or that new or improved treatment results in meeting the no-action levels. It is unclear whether the States would be able to sustain a time-consuming and technical interaction with an increased number of facilities over several years while at the same time assuring effective implementation of the other drinking water regulations. Therefore actual benefits may be less than the theoretical benefits and may not be substantially different than the proposed alternative. Because of this concern, EPA is also considering two variations to this alternative which may reduce the magnitude of this implementation

problem. The first is raising the maximum no-action level to trigger corrosion control treatment to 0.030 mg/l to better assure that this alternative could be implemented while still providing additional health benefits by limiting high lead exposures. The second variation would substitute the no-action level of 0.020 mg/l or less lead in 95 percent or more sample in place of the two no-action levels in the proposal (average level of 0.010 mg/l for lead and pH > 8 in 95 percent or more samples) and have only one no-action level to trigger both corrosion control treatment and public education. EPA requests comment on all of these alternatives.

b. *Use of Total Alkalinity No-Action Level to Trigger Treatment.* EPA is considering an alternative to the proposal which would likely result in lead levels in water somewhat closer to the proposed goal of zero. This alternative is similar to the proposal except that corrosion control treatment would be triggered if the total alkalinity in 95 percent or more samples was not 30 mg/l or higher. Systems would be required to reduce the corrosivity of water until it exceeded this level or demonstrated to the State that it had minimized the corrosivity.

EPA expects that some systems that meet the average lead no-action level and the no-action pH level would not be able to meet the total alkalinity no-action level. Thus, more water suppliers would be required to install or improve corrosion control treatment, and to demonstrate to the States that the treatment they had installed resulted in compliance with the no-action levels or was optimal. Two groups of water suppliers would be affected in this way. Some water suppliers that would meet the proposed no-action level average of 0.010 mg/l lead and the no-action level for pH without any new or additional treatment (beyond that already in place) may fail to meet the total alkalinity no-action level of 30 mg/l. In addition, water suppliers that would already be required under the proposal to improve water treatment to meet the average of 0.010 mg/l and/or the pH > 8 might have to improve their treatment more than necessary to meet the average and the pH only to try to meet the total alkalinity of 30 mg/l. If they could not meet all three levels, they would be required to demonstrate that the water is minimally corrosive. EPA is unable to precisely estimate the increased number of water suppliers that would be affected but it may be about a thousand.

Since more systems would be treating their water to make it less corrosive than under the proposal, more people

would consume water with less lead than under the proposal (although precise estimates of these reductions are not available). This alternative would result in water lead levels closer to the MCLG of zero, thus reducing consumers' exposure to lead more than the approach proposed today. EPA seeks comment on this alternative because this reduced exposure would result in some additional health benefits with potential theoretical benefits under this alternative that could be substantial. Actual benefits may be less than the theoretical benefits and may not be substantially different than the proposed alternative. However, EPA is concerned that more water suppliers may have to demonstrate to the State that they have optimized corrosion control. If average lead levels are equal to or below 0.010 mg/l, but the alkalinity fails to meet the specified level, additional treatment may not substantially reduce lead levels further. Therefore, including alkalinity may cause some systems to incur additional costs unnecessarily. EPA solicits comment on this alternative.

c. *Eliminating the pH No-Action Level.* The proposed regulation would require that water suppliers adjust the pH of their water to 8 or above, unless they demonstrate that corrosion is minimized at lower pH levels, as part of the corrosion control treatment technique. EPA believes this parameter represents the outer bound of water that is minimally corrosive to lead. However, concern with using pH as a fixed regulatory requirement has been raised. If average lead levels are equal to or below 0.010 mg/l, but the pH fails to meet the specified level, additional treatment may not substantially reduce lead levels further. Therefore, including pH may cause some systems to incur additional cost unnecessarily.

Because of this concern, EPA solicits public comment on an alternative in which the pH value is not a regulatory no-action level but only guidance. Under this alternative, determination of compliance with the treatment technique requirement would be based solely on the lead and copper levels found in the sampled residences. The MCL of 0.005 mg/l for lead in water leaving the treatment plant would still apply, as would the MCL of 1.3 mg/l for copper. If samples exceed the average of 0.010 mg/l, the PWS would be required to install corrosion control treatment and conduct a public education program as in the proposed rule. Those systems that continue to exceed the 0.020 mg/l lead no-action level in more than five percent of targeted samples must also conduct public education. Once lead

was reduced to below the 0.010 mg/l average, or the water supplier demonstrated that optimal corrosion control treatment was being applied, the water supplier would be in compliance with the treatment technique requirement.

Under this alternative, suppliers would not be required to measure pH as part of compliance monitoring. However, systems that did not meet the no-action average level for lead would be required to monitor pH and examine the effects of increasing pH above 8 as part of the optimization demonstration.

This alternative could result in less public health protection because fewer systems may be required to install corrosion control treatment. The pH requirement, in conjunction with the lead average no-action level, would trigger treatment in more systems than would the lead average alone. In addition fewer small systems may be required to install treatment under this alternative because these systems are required to take fewer lead and copper samples. Because of the reduced monitoring, more of these systems are likely to have undetected lead levels above the no-action level and thus would not be required to install or improve treatment; the pH no-action level "catches" some of these systems and requires them to control corrosion. Thus final lead levels may not be as close to the proposed MCLG of zero as under the proposed approach.

Note that the actual reduction in benefit in this alternative may be somewhat smaller than the theoretical reduction because it is easier to administer. Therefore, the actual benefits may not be substantially different than the proposed approach.

Theoretically, one way to overcome this problem with this alternative would be for EPA to increase the number of lead samples required by PWSs, especially small systems. However, EPA is concerned that small systems may be unable to take the additional number of samples necessary to assure protection of public health. EPA is especially interested in comment on the trade-off between the proposal and improving this alternative by increasing the number of samples required.

d. *Lead Service Line Replacement Program.* EPA considered requiring replacement of lead service lines and connections in cases where they contribute measurable amounts of lead to the tap water, but is not now proposing this program. EPA particularly solicits public comment both on the specific alternative described below including the materials evaluation and

monitoring requirements, as well as any alternatives that might better achieve EPA's goals in a better and less burdensome way.

The program EPA is considering would require the replacement of lead service lines and connections that, after implementation of any corrosion control treatment, continue to contribute measurable amounts of lead to drinking water (0.003 mg/l or more), and that are under the ownership or control of the PWS. This alternative would have three components: (1) A full materials evaluation (i.e., identification of all buildings served by lead service lines or connections), (2) monitoring at all buildings with lead service lines or connections, and (3) the replacement of lead service lines and connections under the ownership or control of the system that are found to contribute 0.003 mg/l or more to lead levels at the tap. Obviously, no such program would be required in communities in which no lead service lines or connections have been used.

The program considered by EPA would require replacing only those pipes that contribute measurable amounts to lead levels at the tap. Communities that have residences with lead service lines in their targeted sample set (as described in Section V.C.2.) would be candidates for the lead service line replacement program. If the service line sample of any house in the targeted monitoring set exceeded 0.020 mg/l, the system would be required to identify and take service line samples from a number of residences equal to the number of required samples for compliance monitoring. If five percent or more of the total service line samples from this expanded sample exceeded 0.020 mg/l, the service line replacement program would be triggered for that system.

Once the service line replacement program was triggered, the system would be required to take the three steps listed above: inventory all lead service lines and connections in the community, test each of them, and replace all portions of those connections owned or controlled by the system contributing measurable amounts of lead to the drinking water.

Under this program, EPA would establish two rebuttable presumptions. The first rebuttable presumption would be that lead service lines and connections contribute to lead levels at the tap. The water supplier would first be required to conduct a full inventory of the materials used in the water system and to locate all lead service lines, goosenecks, pigtails, and other lead materials. A materials evaluation

should already have been conducted under the requirements of the 1980 amendments to the National Interim Primary Drinking Water Regulations (45 FR 57332, August 27, 1980, 40 CFR 141.42(d)). If not previously done, suppliers would be required to conduct a complete materials evaluation. To rebut the presumption and avoid replacing the lead service lines and other connections, the PWS would be required to monitor each home in the community with a lead service connection or pipe to determine whether the lead service contributes measurable amounts of lead to lead levels at the tap. Specifically, the PWS would have to take a service connection sample and fully flushed sample and demonstrate that the service connection sample has lead levels that are no more than the fully flushed sample from the same tap. This presumption must be rebutted for each lead connection the system wishes to avoid replacing.

The second presumption is that the water supplier owns or controls and therefore can replace, the lead components up to the wall of the building served. In this case, the PWS would be required to replace the entire length of each lead service connection contributing measurable lead to water, from the water main to the building wall, including lead goosenecks, pigtails, and any other lead connections. This presumption could be rebutted by the water supplier by citing local ordinances or State statutes, or in the case of private suppliers, the contract between the system and their customers, that might limit the extent of the PWS' control. Water supplies that rebut the second presumption would have to replace only the portion of each service line and those connections under their ownership or control that contribute a measurable amount of lead to the water.

Lead service connections would be required to be replaced on a fixed schedule as part of the system's treatment plan. No water supplier would be allowed longer than 15 years (starting when the service connection replacement program is triggered unless the system is granted an exemption under Section 1416 of the Act) to replace all lead service connections that require replacement. Water suppliers would be required to replace, or test and rebut the presumptions, for a number of lead services equal in number to at least five percent of the total service connections in the community each year until all those requiring it are replaced. EPA would set the 15-year time limit because this schedule accelerates replacement over current practice.

e. No MCL for Distributed Water. Instead of the proposed two-part approach consisting of MCLs for lead and copper in distributed water and a treatment technique for lead and copper as corrosion by-products, EPA considered an alternative which would establish only a treatment technique for those contaminants which can enter water from source water and as a by-product of corrosion. The alternative would resemble the proposed approach except there would be no MCL for lead and copper in distributed water. Under this alternative, systems meeting the no-action level average of 0.010 mg/l and having 0.020 mg/l or less lead in 95 percent of targeted samples, and having 1.3 mg/l or less copper in 95 percent of targeted samples would be in compliance with the treatment technique requirement.

A system not initially meeting the lead average or copper no-action levels would be allowed to employ whatever combination of corrosion control and source water treatments the system chooses to meet the no-action level. Systems still failing to meet the no-action levels by the specified date (either due to source water or corrosion problems) would be required to obtain a State-approved treatment plan. The treatment plan would contain two elements: (1) Steps to reduce lead levels to below the no-action levels or to demonstrate that source water controls and corrosion control treatment are optimal if the no-action average lead level of 0.010 mg/l were not met, and (2) a public education program if the lead average were not met or if five percent of lead samples exceeded 0.020 mg/l. Under this alternative, systems would generally be required to take the following steps to reduce the lead levels in water:

(1) Conduct a study to determine the amount of lead in morning first draw samples that originates in the source water and the amount originating as a corrosion by-product, in the residences monitored for compliance (monitoring would be conducted in targeted residences, as in the proposed rule).

(2) If lead in source water was found to be above 0.010 mg/l, the system would be required to install lead removal technology including any of those that would remove lead from source water to below 0.010 mg/l as described as BAT in Section IV.C. above.

(3) If lead as a corrosion by-product was found to be above 0.010 mg/l as an average, the system would be required to install corrosion control treatment, as described in Section IV.D.1. above.

(4) If neither source water lead nor corrosion by-product lead were individually above 0.010 mg/l (either naturally or because of treatment installed in (2) or (3) above), but the combination of them was above 0.010 mg/l, the system would be required to install either lead removal treatment as described in (2) above, or corrosion control treatment as described in (3) above, or both. The precise combination chosen would be up to the system, as long as the levels in targeted samples were reduced to 0.010 mg/l or lower as an average. If, after installation of treatment, average lead levels in targeted samples remain above 0.010 mg/l, systems would be required to install any additional treatment required by the State (either lead removal or corrosion control treatment), or if none existed, demonstrate to the State that treatment (especially corrosion control treatment) already installed was being operated in a manner that minimized lead levels.

(5) If, after installation of all the treatment described in (2)-(4) above, morning first draw lead levels remained above an average of 0.010 mg/l or if lead levels are 0.020 mg/l or less in 95 percent of targeted samples, the system would be required to conduct a public education program.

A potential advantage offered by this alternative is that it offers a PWS the

opportunity to determine for themselves and implement the most efficient combination of treatments to minimize lead levels at the tap. A disadvantage of this option is that it would allow systems to distribute water at levels between 0.005 and 0.010 mg/l in cases where lower levels are possible.

V. Monitoring

A. Analytic Methods

1. Background

NPDWRs must include "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system * * * ." Section 1401(1)(D).

EPA evaluated the analytic methods for lead, copper, and pH with respect to the accuracy of recovery (lack of bias) and precision (good reproducibility) in the range of the MCLs and no-action levels being considered. The primary purpose of this evaluation was to determine:

- Whether analytic methods are technically available to measure these contaminants in drinking water;
- What are reasonable expectations of technical performance by analytic

laboratories at the proposed MCL and no-action levels; and

- The costs of analysis for these contaminants.

The selection of appropriate analytic methods for compliance with these regulations includes consideration of the following factors:

- Reliability (i.e., precision/accuracy) of the analytical results;
- Specificity in the presence of interferences;
- Availability of sufficient equipment and trained personnel to implement a national monitoring program;
- Rapidity of analysis to permit routine use; and
- Cost of analysis to water supply systems.

2. Specific Analytic Methods

There are analytic methods available and approved by EPA for the determination of lead in drinking water, as listed in Table 10. There is no currently approved method for copper because there is currently no primary MCL for it. The analytic methods listed in this table have been used for many years to meet the compliance monitoring requirements specified in the interim NPDWR for lead.

TABLE 10.—CURRENTLY APPROVED METHODS FOR ANALYZING LEAD UNDER THE INTERIM REGULATIONS

Methodology	Reference (Method Number)		
	EPA ¹	ASTM ²	SM ³
Atomic absorption; furnace technique.....	239.2	D3559-78A or B	301A-II or III
Atomic absorption; direct aspiration.....	239.1		
Inductively coupled plasma.....	* 200.7A		

¹ "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, OH (EPA-600/4-79-020), March 1979. Available from ORD Publications, CERL, EPA, Cincinnati, OH 45268. (The technique applicable to total metals must be used.)

² Annual Book of ASTM Standards, Part 31 Water, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

³ "Standard Methods for the Examination of Water and Wastewater," 16th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1975.

⁴ "Inductively-Coupled Plasma Atomic Emission Analysis of Drinking Water," Appendix to Method 200.7, September 1985, U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, OH 45268.

Table 11 lists the analytic methods that EPA is proposing today for compliance with the copper MCL, revised lead MCL, and treatment requirements for both lead and copper described in this proposed rule. EPA is

proposing to approve neither the atomic absorption direct aspiration technique nor the inductively coupled plasma technique for measuring lead to determine compliance with today's proposal because the method detection

limits for these two techniques are too high to determine the low concentrations of lead in drinking water proposed in this rule.

TABLE 11.—PROPOSED METHODS FOR ANALYZING LEAD AND COPPER

Contaminant	Methodology	Reference (Method Number)			
		EPA ¹	ASTM ²	SM ³	Other
Lead	Atomic absorption; furnace technique.....	239.2	D3559-85D	304	
	Atomic absorption; furnace technique.....	220.2	D1688-84F	304	
	Atomic absorption; direct aspiration.....	220.1	D1688-84D or E	303A-A or B	

TABLE 11.—PROPOSED METHODS FOR ANALYZING LEAD AND COPPER—Continued

Contaminant	Methodology	Reference (Method Number)			
		EPA ¹	ASTM ²	SM ³	Other
	Inductively coupled plasma	4200.7A			

¹ "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, OH (EPA-600/4-79-020), Revised March 1983. Available from ORD Publications, CERL, EPA, Cincinnati, OH 45268. (For approved analytical procedures for metals, the technique applicable to total metals must be used.)

² Annual Book of ASTM Standards, Vol. 11.01, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

³ "Standard Methods for the Examination of Water and Wastewater," 16th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1985.

⁴ "Inductively-Coupled Plasma Atomic Emission Analysis of Drinking Water," Appendix to Method 200.7, September 1985, U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, OH 45268.

EPA has determined that the analytic methods listed in Table 11 are technically and economically feasible for routine use in compliance monitoring for lead and copper. The costs associated with the analysis of these metals are within the economic means of water supply systems. The cost for analyzing lead and copper is estimated at about \$6 to \$30 per metal per sample. (The actual analytical costs may vary with the laboratory, analytical technique selected, the total number of samples, and other factors.) Also, the number of laboratories that routinely participate in EPA's Water Supply and Water Pollution performance evaluation studies indicates that there are many laboratories available that have the capability to analyze for lead and copper in drinking water using these methods.

Below is a description of each of the techniques EPA is proposing to approve for analysis of lead and copper in drinking water. EPA requests public comment on the technical adequacy as well as the economic feasibility of the proposed analytic techniques.

a. Atomic Absorption Methods. Levels of lead and copper in solution may be determined by atomic absorption (AA) spectroscopy. There are two techniques that may be used: Direct aspiration and the furnace technique. EPA is proposing to allow use of the direct aspiration technique only to analyze for copper because this method cannot analyze the low levels of lead specified in this proposal. In direct aspiration, the sample is aspirated into a flame and atomized. A light beam is directed through the flame into a monochromator and onto a detector that measures the amount of light absorbed by the atomized element in the flame. Because each metal has its own characteristic absorption wavelength, a source lamp composed of that element is used which makes the method relatively free from spectral or radiation interferences. The amount of energy of the characteristic wavelength absorbed in the flame from the metal being analyzed is proportional

to the concentration of the element in the sample. In the furnace technique, a sample is placed in a graphite tube in a furnace, evaporated to dryness, charred, and atomized. Because the percentage of available analyte atoms vaporized and dissociated for absorption in the graphite tube is greater using this method than the percentage of available analyte atomized in the flame of the direct aspiration AA method, the furnace technique can detect lower concentrations.

Low-level analyses of lead in drinking water using atomic absorption methods must be performed with uncontaminated glassware. Retained lead is most likely to occur on the ground glass surface of volumetric glassware. EPA recommends that laboratories avoid the problem of contamination by using a separate set of glassware for low-level lead analyses. Also, particular attention should be given to glassware cleaning by ensuring that all ground glass surfaces are soaked and held in contact with cleaning acid for a minimum of two hours.

b. Inductively Coupled Plasma (ICP)—Atomic Emission Spectrophotometric Method. This method (also known as "EPA Method 200.7") describes a technique for the simultaneous or sequential multi-element determination of trace elements in solution. This method is applicable to the measurement of copper only; it is not yet sensitive enough to measure lead for purposes of this regulation. (Further improvement in the method may make it appropriate for measurement of lead at a later date. If so, EPA would then consider approving this method for measuring lead.) The basis of the method is the measurement of atomic emission by an optical spectroscopic technique. Samples are nebulized and the aerosol that is produced is transported to the plasma torch where excitation occurs. Characteristic line emission spectra are produced by a radio frequency inductively coupled plasma (ICP). The spectra are dispersed by a grating spectrometer and the intensities of the lines are monitored by

photomultiplier tubes. The photocurrents from the photomultiplier are processed and controlled by a computer system. A background correction technique is required to compensate for variable background contributions to the determination of trace elements. Background levels must be measured adjacent to analyte lines on samples during analysis.

The appendix to EPA Method 200.7, entitled "Inductively Coupled Plasma—Atomic Emission Analysis of Drinking Water," describes a technique for concentrating the sample prior to analysis. Under this proposal, systems would be required to follow this concentration technique in processing drinking water supply samples prior to ICP emission spectrometric analysis for copper.

3. Method Detection Limits and Practical Quantitation Limits

Generally, EPA defines the method detection limit (MDL) as the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the true value is greater than zero. The practical quantitation limit (PQL) is the lowest concentration that can be reliably achieved by well-operated laboratories within specified limits of precision and accuracy during routine laboratory operating conditions. Differences between the MDLs and PQLs are expected; the PQL is generally about 5 to 10 times the MDL for relatively clean matrices such as finished drinking water. (See EPA 1987e, and 50 FR 46902, November 13, 1985, for a detailed discussion of MDLs and PQLs.)

The PQL may be determined through interlaboratory studies, such as performance evaluations (PE) studies. However, if data are not available from interlaboratory studies, the PQLs may be estimated. In such cases, EPA believes that a PQL set at 10 times the MDL achieved by good laboratories is generally a fair expectation for routine operation of most qualified State and

commercial laboratories. The use of "five times the MDL" instead of "10 times the MDL" to set the PQL may be appropriate when other considerations suggest that the PQL should be lower, e.g., see discussion of the PQL for vinyl chloride in the final NPDWRs for volatile organic chemicals, July 8, 1987 (52 FR 25690).

Detection limits have been estimated for the available analytical techniques for lead and copper and are summarized in Table 12. Detection limits for lead and copper traditionally have been based on a concentration that corresponds to a specified instrument signal-to-noise ratio (i.e., peak height to background). The detection limits for ICP using the concentration technique (1 µg/l for copper and 0.005 mg/l for lead) were calculated based upon MDLs. The MDL approach involves the determination of method detection limits using a procedure defined in Appendix B to 40 CFR Part 136 (analytic methods for wastewater pollutants). EPA is using the MDL concept to calculate limits of detection for analytes in all newly developed methods for determination of drinking water contaminants.

TABLE 12. DETECTION LIMITS FOR AVAILABLE ANALYTICAL METHODS FOR COPPER AND LEAD

Contaminant	Proposed MCLG (µg/l)	Analytic method	Detection limit (µg/l)
Copper	1,300	Atomic absorption; furnace.	1
		Atomic absorption; direct aspiration.	20
		Inductively coupled plasma.	*6(1)
Lead	0	Atomic absorption; furnace.	1
		*Atomic absorption; direct aspiration.	100
		*Inductively coupled plasma.	*(5)

*Using the concentration technique in Appendix A to the EPA Method 200.7.

*EPA is not proposing to approve these methods for lead because the detection limits are too high to detect low concentrations of lead in drinking water.

The PQLs for lead and copper were determined based primarily upon the

detection limits and the results from PE studies. The PQL for lead was determined using EPA and State laboratory data from Water Supply (WS) PE studies #12-17. The PQL for copper was determined using EPA and State laboratory data from Water Pollution (WP) PE studies #12-16, since copper is not included in WS studies. These results are considered to be optimum since they are drawn from experienced laboratories operating under conditions where they knew they were being tested, using standard samples in distilled water and without interferences. Actual day-to-day operations in a wide variety of laboratories using "real" samples of natural tap water would be expected to produce somewhat poorer results, i.e., have wider performance ranges, especially at the lower concentrations.

EPA used the following procedure to determine the PQLs for lead and copper using the PE study data:

1. Regression equations were generated for precision and accuracy using the EPA and State laboratory data for lead and copper.

2. The percent recovery and relative standard deviation were used to estimate the 95 percent confidence limits. The percent recovery and relative standard deviation were calculated at the proposed MCLG for copper using the regression equations generated from the laboratory data for the contaminant. For lead, the percent recovery and relative standard deviation cannot be calculated at the proposed MCLG because it is zero. Therefore, another concentration must be used to calculate the 95 percent confidence limits. This value is set as close as possible to the proposed MCLG. The lowest MDL for any of the methods used to detect lead is 0.001 mg/l (for the atomic absorption furnace method). The minimum PQL for this method is "five times the MDL" or 0.005 mg/l using the "five to 10 times the MDL" criterion. This value was selected as the appropriate concentration to calculate the 95 percent confidence limits from the regression equations. The percent recovery, relative standard deviation, and the 95 percent confidence limits for lead and copper are summarized in Table 13.

TABLE 13.—95 PERCENT CONFIDENCE LIMITS FOR DETECTION OF LEAD AND COPPER

Contaminant	MCLG (mg/l)	Percent recovery	Relative standard deviation	95 percent confidence limits (percent of true value)
Lead	0.005	107	21	65-149
Copper	1.3	99	4	91-107

¹ The calculations are made assuming that 0.005 mg/l is the lowest possible PQL instead of zero. For further explanation, see the discussion above.

Sources: USEPA 1983-1985, Water Supply PE studies #12-17 and Water Pollution PE Studies #11-16.

3. EPA and State laboratory data for each contaminant were evaluated to determine the limits for the "plus or minus percent of the true value" that most closely approximated the 95 percent confidence limits. They are summarized in Table 14.

TABLE 14.—PROPOSED ACCEPTANCE LIMITS FOR LEAD AND COPPER

Contaminant	MCLG (mg/l)	Acceptance limits (plus or minus percent of true value)	PQLs (mg/l)
Lead	0.0005	30	0.005
Copper	1.3	10	0.050

¹ The calculations are made assuming a minimum possible PQL of 0.005 mg/l instead of zero. For further explanation, see the discussion above.

4. The proposed PQLs for lead and copper were set based on the available data at a concentration where at least three-quarters of the EPA and State laboratories were within the specified acceptance range. These PQLs are summarized in Table 14.

Public comments are requested on the PQLs for lead and copper.

4. pH—Electrometric Method

EPA is proposing to approve the electrometric method for measuring the pH of drinking water samples collected to determine compliance with this proposed rule. The references for this method appear in Table 15 below. Under this method, the pH of a sample is determined electrometrically using either a glass electrode in combination with a reference potential, or using a

combination electrode. The pH meter must provide accurate and reproducible results within ± 1 pH unit and should be

equipped with a temperature compensation unit. The pH meter may need to be adjusted to compensate for

water temperature. Samples should be analyzed in the field at the time of sampling.

TABLE 15. METHODOLOGY FOR ANALYZING FOR PH AND TOTAL ALKALINITY

Parameter	Methodology	Reference (Method Number)			
		EPA *	ASTM *	SM *	Other
pH.....	Electrometric.....	150.1	D 1293-84	423	
Total Alkalinity (as CaCO ₃ , mg/l).....	Titrimetric.....	310.1	D 1067-82A	403	

* "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, OH (EPA-600/4-79-020), March 1985. Available from ORD Publications, CERL, EPA, Cincinnati, OH 45268.

† Annual Book of ASTM Standards, Vol. 11.01, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

‡ "Standard Methods for the Examination of Water and Wastewater," 16th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1985.

5. Total Alkalinity—Titrimetric Method

Under the titrimetric method, total alkalinity is measured by titration to an electrochemically determined end point pH of 4.5. The sample must not be filtered, diluted, concentrated, or altered in any way. The sample would be required to be refrigerated to 40°C and run as soon as practical. The sample bottle should be air tight and should not be opened before analysis. The pH measured at the tap must be provided

with this sample so that an accurate alkalinity measurement can be made.

Under this procedure, the alkalinity is calculated using the following formula:

$$\text{Alkalinity, mg CaCO}_3/\text{l} = \frac{A \times N \times 50,000}{\text{ml sample}}$$

where:

A = ml standard acid used.
N = normality of standard acid.

$$\text{Total alkalinity, mg CaCO}_3/\text{l} = \frac{(2B - C) \times N \times 50,000}{\text{ml sample}}$$

where:

B = ml titrant to first recorded pH.
C = total ml titrant to reach pH 0.3 units lower.
N = normality of standard acid.

B. Laboratory Approval

EPA recognizes that the effectiveness of the proposed regulations depends upon the ability of analytical laboratories to measure lead and copper reliably at relatively low levels. pH measurements must be reliable as well. EPA's regulations specify that only approved laboratories can analyze compliance samples (40 CFR 141.28).

EPA's existing drinking water Laboratory Certification Program (LCP) has established the use of external checks of performance to evaluate the ability of laboratories to analyze samples for specific contaminants and to produce data within specific limits. For this purpose, EPA provides performance evaluation (PE) samples to laboratories on a regular basis; participation in this program is a prerequisite for a laboratory to achieve certification and to remain certified for analyzing compliance samples. Achieving acceptable performance in these studies of known test samples provides some indication that the laboratory is following proper practices. Unacceptable performance may be indicative of problems that could affect

the reliability of the compliance data generated for specific contaminants.

Unacceptable performance by any laboratory may trigger an investigation to establish the possible cause(s) and to take corrective action. EPA recognizes that even a superior analytical laboratory occasionally produces data that are outside the acceptable limits for statistical reasons rather than any actual analytic problem. A provision for rapid follow-up analysis if a laboratory fails the initial determination is necessary to decrease the likelihood of statistical error and to determine if a real problem exists.

EPA's present PE sample program and the approaches used in the determination of laboratory performance requirements were discussed at 50 FR 46907 (November 13, 1985). Acceptable performance has historically been set by EPA using two different approaches: Regressions from performance of pre-selected laboratories or specified accuracy requirements. EPA requested public comment on these approaches in the November 13, 1985 notice. Most commenters on that notice supported the use of a "plus or minus percent of the true value" approach to derive acceptance limits instead of generating performance requirements from study statistics. EPA agrees with these commenters that this is the best

For low alkalinities, the titration is stopped at a pH in the range of 4.3 to 4.7. The volume of titrant required to reach that pH and the specific pH are recorded. The sample is next titrated to a pH exactly 0.3 pH units lower and the volume of titrant required to reach this end point is recorded. (Method 403, Standard Methods for the Examination of Water and Wastewater, 16th edition, 1985).

For low alkalinities, total alkalinity is calculated by the following formula:

approach and will specify accuracy requirements in the revised regulations whenever possible.

1. Laboratory Performance for Lead and Copper

EPA has evaluated performance data gathered from past PE studies to set performance requirements for lead and copper analysis. The available PE data indicate that both the precision and the accuracy attained for specific inorganic contaminants are contaminant-specific. For example, the percent recoveries are 99 percent for copper and 107 percent for lead while the relative standard deviations are 4 percent for copper and 21 percent for lead. The "plus or minus percent of the true value" acceptance limits have been derived for each contaminant taking into consideration the expected precision and accuracy and using 95 percent confidence limits to estimate the acceptance limits. For example, the acceptance limits for copper using 95 percent confidence limits would be 99 percent $\pm 2\%$ (4 percent) or 91 to 107 percent of the "true value." Thus, a ± 10 percent of the "true value" acceptance limit is approximately equal to the 95 percent confidence limits. The acceptance limits would apply to concentrations equal to or more than the PQL.

The acceptance limits are summarized below:

Contaminant	Acceptance limits
Copper	$\pm 10\%$ at >0.050 mg/L
Lead	$\pm 30\%$ at >0.005 mg/L

Public comments are requested on the acceptance limits for lead and copper.

2. Laboratory Performance for Total Alkalinity

The approval criteria for the pH analysis is different from all of the other approval criteria because pH analysis is done in the field. 49 FR 43234, Oct. 26, 1984. The pH analyses would be conducted in the targeted homes with a pH meter. The pH papers would not be permitted for this analyses. The pH meter must meet the specifications listed in the available methods (see Table 15). Under the proposal the pH analyses must be conducted by samplers who have been certified to use pH meters. This is especially necessary because exposure of the sample to air changes sample pH when the sample contains anions such as carbonate (EPA 1982). However, the analyses conducted on site may be limited by either a lack of certified samplers or a lack of pH meters. EPA requests comment on the pH approval criteria.

Therefore, EPA is proposing to allow systems which serve 3,300 persons or less collect the pH sample and send it to a certified laboratory for analysis. EPA is aware that this exception will often result in a systematic bias of the pH readings to more frequent misses of the no-action levels, and encourages systems to consider carefully the tradeoff between ease of analysis and analytical accuracy (EPA, Method 150.1, Methods for Chemical Analysis of Water and Wastes, revised March 1983). EPA requests comment on whether non-field testing of samples should be allowed for systems that serve fewer than 3,300 persons.

EPA is considering and taking comment on a requirement that water systems meet a specific alkalinity value in their water in addition to the proposed no-action levels. It is also critical to know the alkalinity of the water in order to determine the type and extent of appropriate corrosion control treatment. EPA therefore solicits public comment on the following laboratory certification requirements that would be necessary if the alkalinity requirement were adopted in the final rule.

Laboratories that meet the approval criteria for metal analyses would also be

required to meet the performance requirements for total alkalinity analyses because, under the proposal, all of these analyses are required for samples taken from the targeted homes (as explained below), and EPA would require all analyses for a set of samples to be conducted at the same laboratory. EPA has evaluated performance data gathered from past PE studies to set the performance requirements for total alkalinity. However, the procedure for selecting the performance requirements is different than the procedure for the metal analyses because there is no MDL or PQL for the analysis of total alkalinity. Since laboratories must meet the approval criteria for total alkalinity in addition to the criteria for the metals, the percentage of laboratories that can achieve this criteria must be higher than that of the metals so that only a very few laboratories that pass the criteria for metals are eliminated because of a failure to meet the alkalinity criteria. Therefore, ± 20 percent of the "true value" has been selected as the approved criteria for total alkalinity. In the data from the PE studies, at least 90 percent of the EPA and State laboratories are typically able to measure total alkalinity within ± 20 percent of the true value when the active amount is greater than or equal to 30 mg/L.

C. Monitoring Protocols

As explained above, water suppliers would be required to monitor a variety of parameters in order to demonstrate compliance with the proposed rule. These parameters include lead and copper levels at entry points to the distribution system and at taps, and pH at taps. As described below, community and non-transient non-community water systems would have different monitoring requirements for determining compliance with the corrosion control treatment techniques of this proposal.

For the purposes of averaging, all lead levels measured between the PQL (i.e., 0.005 mg/L) and the MDL (0.001 mg/L) would be averaged for the compliance determination. All lead levels below the MDL of 0.001 mg/L would be reported as zero and averaged as such. Lead levels reported below an MDL larger than 0.001 mg/L would be reported as that MDL and averaged as such.

1. Monitoring for Compliance with the MCLs

Water suppliers would be required to sample water as it enters the distribution system after any treatment to determine compliance with the MCLs for lead and copper. Water suppliers relying solely on ground water would be

required to take only one sample per year per entry point to the distribution system. Water suppliers relying on surface water as their source would be required to take one sample each quarter to account for seasonal variations in contaminant levels. Water suppliers with both surface and groundwater sources would be required to monitor quarterly all entry points to the distribution system. States would have the discretion to identify representative wells for sampling (if there is no treatment or blending) for systems with multiple wells drawing from the same aquifer.

For the first round of MCL monitoring (which would last one year), historical data meeting the monitoring requirements specified in the proposed rule could be used in lieu of new data if the historical data were collected in a manner consistent with the final regulations. The total number of samples could be reduced by the use of composite samples at the discretion of the State. Combinations of samples from up to five sources would be allowed. If the concentration in the composite sample indicates that one or more of the samples may exceed the MCL, follow-up sampling would be required at each sampling point in the composite.

Follow-up sampling would be required if the reported concentration of a five-sample composite exceeds the method detection limit. For copper, an accurate analysis of one-fifth of the MCL is not a problem. For lead, however, the method detection limit is equivalent to the detection limit for the furnace atomic absorption technique. Laboratories should determine their method detection limit for this method by the procedure listed in Appendix B to 40 CFR Part 136. Laboratories should be able to achieve a method detection limit of 0.001 mg/L and data should be reported down to this concentration. If a laboratory is unable to achieve an MDL of 0.001 mg/L or lower, then sample compositing would not be permitted.

If the result of one analysis exceeds the MCL for lead or copper, the system would be out of compliance and the procedures for public notification must be followed. However, States would have the discretion to allow one additional sample to be collected as soon as possible (not to exceed two weeks from the date of the initial sample) at the same sampling location to verify the original results. In this case, if the average of the two samples analyzed exceeds the MCL, the system would be out of compliance and procedures for public notification must be followed. If the average is less than

the MCL, the system would be in compliance, the first sample results notwithstanding. Systems exceeding the MCL would be required to sample more frequently than the minimum federally mandated requirements. The State must specify the increased monitoring frequency.

For community water systems, if there have been no violations for the most recent two years of monitoring, States could reduce the standard monitoring requirements to as infrequently as once every five years for systems serving fewer than 500 persons and any system serving 500 or more persons which is supplied only by ground water. For systems using surface water sources or a combination of surface and groundwater and serving more than 500 persons, monitoring could be reduced to once per quarter for one year, repeated every five years. No reductions in monitoring would be allowed for non-transient non-community water systems.

All systems would be required to begin monitoring to determine compliance with the MCLs according to the schedule in Table 16.

Table 16.—Starting Dates for Monitoring

System size	Monitoring to begin no later than—
>3,300.....	3 months after publication of final rule.
500-3,300.....	15 months after publication of final rule.
<500.....	27 months after publication of final rule.

EPA is phasing in the monitoring by system size in the same manner it has in previous NPDRs to give systems time to learn about and implement the new requirements and to ease the burden on analytic laboratories which may not be able to cope with a sudden increase in the number of samples requiring analysis.

2. Monitoring for Compliance with the Corrosion Control Treatment Technique Requirement

Compliance with the corrosion control treatment technique requirement would be determined based on pH, lead, and copper levels at the tap. All systems would be required to begin monitoring for compliance with the treatment technique according to the schedule in table 16. Monitoring for each of these parameters at a targeted set of sample sites (see Section IV.C.2.a.i. for a discussion of how sites are to be selected) would be required quarterly for systems serving more than 3,300 persons, and less frequently for smaller systems. States may reduce monitoring

frequency for systems serving more than 3,300 persons once compliance is established. Because the lead and copper no-action levels are measured as average and 95th percentile values, compositing is not allowed for samples collected to determine whether the no-action levels are met.

Values for pH are not expected to vary throughout the day at any given location, although they may vary among locations. However, lead and copper levels at the tap do vary considerably depending upon a variety of factors, including the standing time of the water in the plumbing pipes. Determination of whether the no-action levels were met would be determined by morning first draw and service connection samples. A morning first draw sample is the first sample taken after water has stood in the building's plumbing overnight, or for 8-18 hours, without flushing. (Flushing means running the water without capturing the water for sampling.)

A service connection sample is a sample of water that has been standing for 8-18 hours in the building service connection (service line and other connections). Service connection samples may be collected by several methods. One is to flush the tap until there is a temperature change (decrease) in the water. The colder water is that which has stood outside the house in the service connection. Another method is to measure pipe length and diameter from the tap to the service line and flush the volume estimated to be contained in the household plumbing before the service connection. Once the house water is flushed, the service connection sample is collected. A final method of collecting a sample representative of a service connection is to insert a sampling tap in the service line. However, this last method has the disadvantage of scraping bare a portion of the metal surface. This bare surface may result in temporarily high lead levels.

Morning first draw samples and service connection samples must be one liter in volume and collected at the cold water kitchen tap of targeted residences. Systems which have lead service connections would have to collect one half the required number of samples connection.

EPA expects that for community water systems the residences sampled would generally be single-family houses, but systems could include apartments and other multiple-family housing where such housing constitutes more than 20 percent of the housing served by the community. For non-transient non-community water systems, a morning

first draw sample would be required from the tap or other outlet typically used to draw water for human consumption, in each building served by the NTNC system. The rationale for these requirements is as follows:

- One of the important determinants of lead and copper levels in drinking water is the standing time of the water in plumbing pipes. Water that has not stood in the pipes (i.e., fully flushed water) will generally have the lowest lead and copper levels of any sample taken at that tap. Water that has stood in the pipes for long periods will have higher lead and copper levels; water standing in pipes 8-18 hours ("standing samples") represents the highest levels that will routinely be found in drinking water. Standing samples would be required for several reasons. First, monitoring of water standing overnight, or some other specific long standing time (i.e., 8-18 hours), provides a consistent basis for measuring the progress of corrosion control treatment towards reducing levels of lead and copper. Standing samples represent the high end of actual human exposures are variable and are not known precisely (because people drink water from a variety of sources and also water that has a variety of standing times), actual exposure to lead and copper via drinking water will generally be no higher than levels found in standing samples.

- Sample volume also has an important effect on lead and copper levels in standing samples. The first 100 milliliters or so can have high levels from leaching lead out of faucets because lead is used in the manufacture of brass and bronze, which are often used in faucets and fittings. The next 400-500 milliliters represent water standing in the pipes near the faucet, and also may have high lead levels because of the numerous lead soldered joints that can lead up to the faucet (Lassovszky, 1984). Taking a one-liter sample represents less extreme lead levels than those generally found in a smaller sample because the initial high concentrations will be diluted by the later part of the sample, which contains lower concentrations. Because of the variation in lead levels with sample volume, EPA is proposing one liter as the standard sample volume for all samples.

Although nearly all the data provided to EPA by systems has been collected from one-liter samples, the question of the cost of shipping one-liter bottles to the laboratory has been raised to EPA. One approach to reduce the weight and bulk would be to collect 500-ml samples

instead. However, 500-ml samples will generally show a higher proportion of lead concentration from the faucet and a lower proportion from far and nearby lead soldered joints, than will 1 liter samples. However, because it is unlikely that an individual would consume an entire liter of water represented by a standing sample, EPA requests comment on an alternative sample volume of 500 ml. This alternative may better reflect a typical exposure. EPA estimates that 500 ml samples will show consistently higher concentrations of lead and copper than 1 liter samples, thus increasing the relative protectiveness of the proposed rules.

An alternative approach to lower the weight would be to collect one-liter samples and transfer a 500-ml aliquot to another bottle for shipment and analysis. The Agency is reluctant to adopt this approach because lead adheres to containers very easily. This increases the probability of sampling error and would likely show a consistent, unacceptable downward bias. The Agency solicits comment on this potential problem and possible approaches for minimizing it.

a. *Location of Sampling Sites.* Because the likelihood of high lead and copper levels in drinking water is not randomly distributed among buildings served by a given public water system, EPA is proposing that monitoring for compliance with the treatment technique requirement be targeted to residences most likely to have lead problems. Targeting for copper is not necessary because, in targeting for lead, copper corrosion problems should be identified simultaneously. Lead, copper, and pH would all be measured at the same set of residences. Systems would be required to identify a sampling pool that includes 50 percent more sites than the number required for monitoring each monitoring period (which varies by system size), to ensure that systems can get access to an adequate number of sites. The specific residences to be actually sampled would be selected randomly from the targeted set of residences. Once the system monitors the minimum number of sites, it would be required to use them every monitoring period. If one or more of these initial sites is no longer accessible, the system may, with State concurrence, substitute an alternative monitoring point from its sampling pool with the same characteristics as the initial point.

i. *Targeted Monitoring and Materials Evaluation.* To ensure that systems sample residences most likely to experience elevated levels of lead in tap water due to corrosion, water suppliers

first would be required to conduct a materials evaluation to identify an adequate number of these high risk residences for monitoring. High risk residences are defined to include those that are at the ends of the distribution system and either: (1) Have lead service connections and/or lead interior plumbing; or (2) have lead solder that is less than five years old. "Ends of the distribution system" means those areas of low or no flow, sometimes known as "dead-ends." In communities where lead service connections are present, the group of residences selected would be required to include an equal number of residences for morning first draw and service connection samples. By targeting high risk residences for lead sampling, EPA believes that the monitoring would be more likely to identify high lead levels in communities where they exist, thus better assuring a high degree of public health protection. Targeting also would reduce the number of samples required to provide this level of public health protection.

To conduct the materials evaluation and identify sites for targeted monitoring, each system would be required, at a minimum, to consider the information identified by the State pursuant to 40 CFR 141.42(d). As necessary, the system must consider:

(A) Plumbing codes, permits, and records in the files of the community building department that indicate the plumbing materials installed within residences, including:

- Lead in piping, solder, caulking, interior lining of distribution mains, alloys, and home plumbing;
- Copper in piping, alloys, service lines, and home plumbing;
- Galvanized piping, service lines, and home plumbing.

(B) Inspections and records of the distribution system that indicate the material composition of the distribution lines, service lines, and connections.

(C) Existing water quality information, including results of prior analyses of water in the system or from individual residences, indicating residences in which the lead level of the water may be of concern.

(D) Design plans of the distribution system indicating residences that are served by the ends of the distribution system (i.e., areas of low or no flow).

The evaluation could be conducted based on building permits and other records, inspections of the distribution system and buildings, information from customers, or other means that reliably characterize the materials used in the construction of the distribution system and plumbing in buildings served. In

conducting the materials evaluation, the system would not be required to examine every building served for the presence of lead materials.

Water suppliers that assert that there are insufficient residences in either of the two targeted categories (residences at the ends of the distribution system with either (1) lead service connections and/or lead interior plumbing, or (2) lead solder less than five years old) would be required to document this assertion to the State as follows:

1. *Lead service connections and interior plumbing.* The system would document via the materials evaluation that lead services, goosenecks, pigtails, or interior lead piping were never used in portions of the community served by the ends of the system or have all been replaced. If this could not be determined by records, the system would be required to inspect the service lines and connections, and interior plumbing, of all housing and other buildings constructed before 1940 (few lead service lines were used after this date) and show that no service lines or connections, or interior plumbing, are composed of lead or lead-containing materials.

2. *Lead solder.* The system would demonstrate that the State or community has had in effect and has consistently and successfully enforced a ban on lead solder use comparable to the Federal ban for five years, or that no lead solder was ever used in construction or residences and other buildings in the community served by the ends of the distribution system.

If the public water system could not identify a sufficient number of residences that have the required characteristics, the public water system would be required to demonstrate this to the State as described above and add to the sampling pool, as equally distributed as possible, residences that either: (1) Contain lead solder that is less than five years old; or (2) are serviced by lead service connections, as appropriate. If the public water system still could not establish a sampling pool sufficiently large to meet the monitoring requirements of this section, the public water system would be required to add to the sampling pool a number of residences with lead solder (i.e., solder more than five years old) for sampling sufficiently large to meet the monitoring requirements of this section.

While State approval of monitoring plans would not be required, States would have the authority to disapprove any monitoring plan that does not meet the targeting requirements. A system with a disapproved monitoring plan

would be in violation of the regulations until the State approved a revised plan.

EPA solicits comment on the proposed criteria for selecting the targeted samples.

ii. Non-Residential Monitoring

Alternative. As described above, EPA is proposing that compliance monitoring be conducted at targeted residences. Based on information from hundreds of water suppliers which have successfully collected standing samples from residences during the last ten years, the Agency expects that virtually all systems will be able to gain access to the required number of residences, especially since many consumers will welcome the information it provides them about the quality of their own drinking water supply. Under the extremely unlikely event that a system is unable to get access to take the required number of samples, EPA may consider allowing an exception to the requirement. Under this rare circumstance, the system would have to demonstrate to the State that it had made several good faith efforts to collect the required samples, including describing to each customer the direct benefits of the sampling. Then the system would have to provide samples from other locations with plumbing characteristics nearly identical to those encountered in targeted residences. For example, a PWS may be able to identify non-residential taps to supplement the accessible residential taps to reach the required number of monitoring sites. These non-residential taps would be required to be connected to plumbing with a configuration and daily water use patterns very similar to those found in single-family residences, to approximate lead levels that would be found in such residences. A second approach might be for a PWS to construct a plumbing system to simulate that found in a home. This simulation would need to be located at the ends of the distribution system, and have either (1) a lead service connection or lead interior plumbing (if there were any lead service connections in the system or its customers' plumbing), or (2) lead solder that is less than five years old. The system would have to assure that the water use patterns in this simulation closely resembled those found in a residence, to ensure the lead levels measured approximate those in private residences.

EPA requests comment on this and any other last-resort sampling approaches which may allow systems to obtain tap samples which represent the water quality found in targeted residences.

b. **Number of Sample Sites.** Two major factors affect the selection of a suitable number of sample sites. First is the degree of certainty that levels and prevalence of lead and copper in water have been identified accurately (more samples result in greater certainty) throughout the community. Second is the cost and ease of implementation of the sampling system (more samples are more costly and a plan requiring more samples may be more difficult to implement). In designing the sampling plan, EPA considered several important design criteria. These include: The number of samples taken per monitoring period (by system size), the length of the monitoring period, the targeted monitoring approach, and the desire to know in advance the maximum total number of samples which would be required from each supplier. Having considered these factors and criteria, EPA has developed a proposal which is relatively low in cost and easy to implement. It clearly defines the number of samples required from each system and it requires the minimum number of samples from small systems.

EPA is also considering an alternative sampling plan and may adopt it in the final rules. Compared to the proposal, this alternative would provide greater certainty about the lead and copper levels and reduce the monitoring costs for large systems, but it may increase monitoring costs for small systems. EPA solicits comment on both the proposed and the alternative sampling plans described below. EPA is interested in how it might improve the proposed approach to increase the certainty it provides regarding lead and copper levels and how it might improve the alternative to make it less costly to implement. In particular, EPA solicits comments on the proposed and alternative approaches to monitoring including the choice of standard levels, appropriate numbers of samples, frequency of sampling, methods for evaluating sample results relative to the no-action levels, and the design of compliance rules within the context of a sampling and evaluation program.

i. **Proposed Approach.** Under the approach proposed by this notice, the number of sample sites would be based on system size. Water suppliers would be required to monitor on this schedule starting by the date specified in Table 16. Under the proposed approach, the system would collect one sample from each sample site (i.e., targeted residence) according to the frequency listed in Table 17 until compliance is established by meeting all no-action levels for at least one year or by

completing implementation of a State-approved treatment plan (whichever is later). Thereafter State may reduce the required monitoring frequency for systems serving more than 3,300 persons to a minimum of, one annual sample set taken during July, August, or September from each site. Systems serving 500-3,300 persons would take one sample set during July, August or September and repeat the sampling at least every two years. Systems serving fewer than 500 persons would take one sample set during July, August, or September and repeat the sampling at least five years. Non-transient non-community water systems would not be allowed to reduce their monitoring. Any additional samples taken (beyond those required by the regulation) which a system wants to use to determine whether the no-action levels are met must meet the targeting criteria discussed above.

TABLE 17.—NUMBERS OF SAMPLES AND FREQUENCY OF SAMPLING FOR THE LEAD AND COPPER CORROSION TREATMENT REQUIREMENT UNLESS REDUCED BY THE STATE

Population served	Number of samples
>100,000.....	50/quarter.
10,001-100,000.....	30/quarter.
3,301-10,000.....	20/quarter.
500-3,300.....	10/year for 1 year, repeated every 2 years.
<500.....	10/year in one year, repeated every 5 years.

ii. **Alternative Sampling Plan.** EPA is also considering an alternative to the proposed sampling plan and may adopt it in the final rules. This alternative, although somewhat more complex in design, would require, for many systems, fewer or an equal number of samples than required under the proposed sampling scheme.

The alternative plan is based on a double sampling scheme developed by Dodge and Romig (1959). The plan uses a two-tier approach. A supplier would be required to obtain a relatively small number of samples in the first stage and then, based on the outcome of the initial sampling, would be either relieved of further sampling for that monitoring period or required to obtain additional samples during that monitoring period to determine whether the system was in compliance or needed to take further action. In localities where lead levels at the tap are generally either quite low or quite high, sampling would probably be limited to the first tier.

A benefit of this approach is that no system fails to meet a no-action level (or alternative approved by the State after a system has demonstrated optimization) on the basis of just one exceedance. However, this benefit comes at a cost of increased sampling in some circumstances for the smallest systems.

Table 18 specifies the number of samples to be obtained for systems serving populations of various sizes (leftmost column). The following discussion explains how the alternative sampling plan would be used to determine whether a PWS meets the no-action level for a maximum of 0.020 mg/l lead. After testing the appropriate number of samples in Stage 1, a system would "pass" and be excused from further sampling if no (zero) samples exceeded the lead maximum no-action level. If the number of such exceedances

was greater than the specified allowable number (rightmost column), the system would "fail" and also be excused from further sampling, but would be required to take further actions. For example, if the system has not yet installed or improved corrosion control treatment, it would be required to do so. In cases where the number of exceedances in Stage 1 was not greater than the allowable number, systems would be required to collect the number of additional samples indicated for Stage 2. Passing or failing would depend on the total number of exceedances in the combined groups of samples. For example a system serving 100,000 persons that obtained more than a total of three samples with lead levels above the maximum no-action level in 40 samples would fail and having to undertake corrosion control treatment.

Figure 3 illustrates the decision process involved in applying this scheme.

TABLE 18.—NUMBERS OF SAMPLES REQUIRED IN STAGE 1 AND STAGE 2 OF DOUBLE-SAMPLING PLAN ¹

Population size	Number of samples		Allowable exceedances
	Stage 1	Stage 2	
< 500	10	5	1
500-3,300	10	10	1
3,301-10,000	20	10	1
10,001-100,000	25	15	2
> 100,000	30	20	3

¹ Frequency of sampling would be the same as under the proposed approach. Stage 1 and Stage 2 samples would be taken in the same monitoring period.

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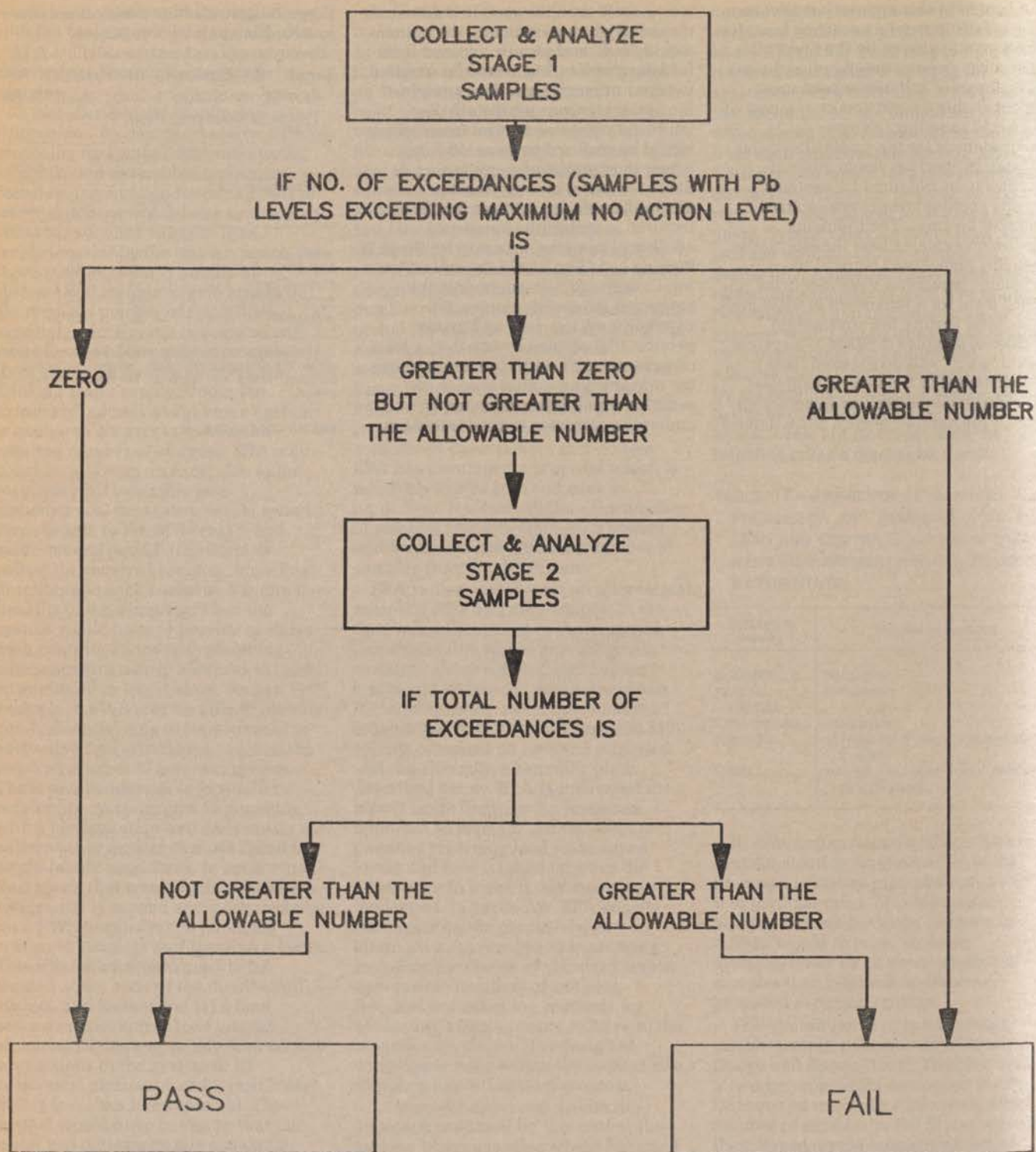


FIGURE 3 DOUBLE SAMPLING DECISION PROCESS.

If the samples are representative of the taps under consideration, application of this scheme provides 90 percent confidence that not more than 14 percent exceedances would occur among the taps (Svensgaard, 1988).

3. Monitoring Requirements for Non-transient Non-community Water Systems

Non-transient non-community water systems would be required to monitor water entering the distribution system once every five years for compliance with the MCLs for lead and copper. To demonstrate compliance with the treatment technique requirement, NTNC water systems would be required to monitor lead, copper, and pH (in a morning first draw or service connection sample) at least one tap annually during the months of July, August, or September in each building served by the NTNC water system. The monitored tap would be required to be the tap most frequently used for water consumption, such as a kitchen tap.

4. Additional Data Collection

EPA is currently collecting additional data to support this regulation for lead and copper in drinking water, particularly data on lead service line replacement. EPA solicits any additional data on pipe replacement or any other aspect of this proposal from the public.

EPA has developed a monitoring protocol for measuring lead in drinking water and guidance for using it which is more detailed than the protocol required under the proposed regulations. This more detailed protocol is available to the public from EPA. EPA welcomes data from samples taken under this protocol which may help to answer any of the issues highlighted in this proposal.

The monitoring protocol offers a means to determine whether a shorter standing time such as 30 minutes may be successfully substituted for the 8 to 18 hour standing time that would be required for morning first draw samples. In addition, the guidance would assist water suppliers in locating the sources of lead in drinking water (i.e., water mains, service lines, or interior plumbing). This information would assist systems in establishing sampling points for targeted monitoring and for focusing public education programs.

EPA may be able to provide technical assistance to a limited number of water suppliers which are interested in conducting extensive lead monitoring, and are willing to share all data with EPA in exchange for the support. Specifically, EPA is interested in before-and-after treatment data from individual residences served by water suppliers

instituting corrosion control treatment and before-and-after data from individual residences in communities replacing PWS-owned or -controlled portions of lead service lines or connections. This information also could be used to assist decisions among the various options described in this proposal, in particular. Data from various tap samples taken before and after treatment would assist the Agency in further assessing the alternative of requiring replacement of lead service lines and connections under the ownership or control of water suppliers. Collection of systematic data of this type also may allow the Agency to better estimate the costs and benefits of the rule.

VI. Public Notification

Under section 1414(c)(1) of the Act, each owner or operator of a public water system must give notice to persons served by it of (1) any violation of an MCL, treatment technique requirement, or testing provision prescribed by an NPDWR; (2) failure to comply with any monitoring requirement under section 1445(a) of the Act; (3) existence of a variance or exemption; and (4) failure to comply with the requirements of a schedule prescribed pursuant to a variance or exemption. The 1986 amendments required that within 15 months of enactment, EPA amend its current public notification regulations to provide for different types and frequencies of notice based on the differences between violations which are intermittent or infrequent and violations which are continuous or frequent, taking into account the seriousness of any potential adverse health effects which may be involved.

EPA promulgated regulations revising the public notification requirements on October 28, 1987 (52 FR 41534). The regulations require that public notices for MCL, treatment technique violations and violations of a variance or exemption ("Tier 1 violations") contain mandatory health effects language specifying concisely and in nontechnical terms what adverse health effects may occur as a result of the violation. States and water utilities remain free to add additional information to each notice, as deemed appropriate for specific situations. Community water systems (CWSs) with Tier 1 violations must notify the public by newspaper or mail or hand delivery. Community water systems which fail to comply with any monitoring or testing requirements, which are granted variances or exemptions, or are required to give newspaper notice repeated quarterly by mail or hand delivery, with additional

notice required at State discretion. NTNC systems may either notify in the same manner as CWSs or post a notice continuously.

Violations of the lead or copper MCLs or the treatment technique requirements of this rule would be Tier 1 violations. Violations of the treatment technique requirement include but are not limited to any of the following:

- (1) Failure to submit or apply for (depending on system size) a treatment plan by the date required, if required.
- (2) Failure to implement any treatment plan requirement by the date specified in the treatment plan, including failure to implement required corrosion control treatment, failure to demonstrate to the State's satisfaction that treatment is optimal, failure to continue required treatment.
- (3) Failure to design and implement a public education program, if required.

For Tier 1 violations, EPA is proposing the following mandatory health effects language:

Lead

The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lead is a health concern at certain exposure levels. Lead is a soft, dull, gray metal that has frequently been used in water supply plumbing materials, especially flux, solder, pipes, and brass and bronze fixtures. Lead usually contaminates drinking water as a result of the corrosion of these plumbing materials by the water they carry. Lead has been shown to cause a variety of adverse health effects in humans and animals. In humans, lead has been shown to interfere with the formation of red blood cells (heme synthesis), cause anemia, cause kidney damage, impair reproductive function, reduce birth weight, cause premature birth, delay physical and mental development in babies and young children, impair mental abilities in children, and increase blood pressure in adults. Many of these effects have been observed at relatively low exposure levels. Studies on animals indicate that lead may also cause cancer at high doses. EPA has set an enforceable drinking water standard at 0.005 ppm (parts per million) for lead leaving the treatment plant and entering the distribution system. EPA also requires public water systems to treat their water to minimize lead contamination resulting from the corrosion of plumbing materials when lead in tap water that has been standing overnight exceeds an average of 0.010 ppm. Drinking water that meets these standards is associated with little of this

risk and should be considered safe to drink.

Copper

The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that copper is a public health concern at certain levels. Copper is an orange metal that is commonly used for plumbing pipes in homes and other buildings. Copper generally contaminates drinking water as a result of the corrosion of copper pipes by the water they carry. When copper corrodes, the water and sink are often stained green. Copper is an essential nutrient, but at high doses it has been shown to cause stomach and intestinal distress, liver and kidney damage, and anemia. Persons with Wilson's disease may be at higher risk from copper toxicity than the general public. EPA has set an enforceable drinking water standard for copper at 1.3 ppm (parts per million) for water leaving the treatment plant and entering the distribution system. EPA also requires public water systems to treat their water to control copper contamination resulting from the corrosion of plumbing materials when copper in tap water that has been standing overnight exceeds 1.3 ppm in more than 5 percent of samples. Drinking water that meets this standard is associated with little to none of this risk and should be considered safe to drink.

VII. Variances and Exemptions

A. Variances from MCLs and Exemptions from the MCLs and Treatment Technique Requirements

Under the Safe Drinking Water Act, variances from MCLs and exemptions from MCLs and treatment technique requirements are permitted only if the granting of the variance or exemption will not result in an unreasonable risk to health (URTH). Sections 1415(a)(1)(A) and 1416(a)(3). States with primacy have authority to grant variances and exemptions.

Variances from MCLs may be granted to water suppliers that have applied BAT but which fail to meet the MCL using that technology. Section 1415(a)(1)(A). Variances from MCLs are generally designed to address cases in which the source water is so contaminated that even application of BAT is insufficient to effectively reduce contaminant levels to below the MCL. Water suppliers that obtain variances from MCLs must be placed on a schedule to come into compliance with the MCL "as expeditiously as practicable" and must implement any

additional control measures in the interim prescribed by the State.

Exemptions from both MCLs and treatment technique requirements may be granted to water suppliers due to compelling factors (including economic factors). Section 1416(a). Systems granted an exemption receive additional time to install BAT or the required treatment technique. The exemption may be extended for up to 3 years if the system makes certain showings. Section 1416(b)(2) (A) and (B). Systems which serve fewer than 500 persons may obtain extendable two-year extensions under certain conditions. Section 1416(b)(2) (C). As with variances, exemptions must include a schedule for compliance and requirements for implementing any necessary interim control measures.

EPA is not now proposing to designate by rule a specific level of lead or copper in drinking water that constitutes an unreasonable risk to health. To date, the Agency has not established in regulations URTH levels for any contaminant. However, as for other contaminants, EPA intends to publish guidance regarding what drinking water contaminant levels would constitute an unreasonable risk to health for States to use in deciding whether to grant variances or exemptions to public water systems. This guidance will be available for public review and comment and will be completed by the time the final regulation for lead in drinking water becomes effective.

B. Variances From the Treatment Technique Requirements

The Act also allows variances from treatment technique requirements, but these are fundamentally different from variances from MCLs. Variances from treatment technique requirements are granted to water suppliers that do not need to implement the treatment because they have high quality source water, so treatment is unnecessary to protect the health of persons served by the water supply. Section 1415(a)(1)(B).

Because of the design of the treatment technique requirement for corrosivity proposed in this rule, EPA believes that the need for variances from the proposal treatment technique requirement would be rare. Specifically, since the proposed rule requires systems to optimize corrosion control, i.e., lower lead levels as much as technically feasible with corrosion control treatment, by definition, all public water systems could comply with the treatment technique requirements.

The only case in which application of corrosion control treatment would not be necessary or beneficial in reducing

lead levels is the rare community that has no lead or copper materials in its plumbing and distribution system, including private residential plumbing. Such communities may include new trailer home parks or other developments of prefabricated housing which were constructed using all plastic piping. If a water supplier could demonstrate that no plumbing materials containing lead have been used in the construction of any homes in the community or in any distribution facilities, a variance from the treatment technique requirement could be granted.

EPA solicits comment on granting of variances from the treatment technique requirements, especially whether there are other conditions under which the treatment technique may not be necessary or beneficial for reducing lead and copper exposures via drinking water.

C. Point-of-Use (POU) and Point-of-Entry (POE) Devices and Bottled Water

EPA believes that central treatment should be the primary means of attaining MCLs and providing water equivalent to water treated as set out in an NPDWR prescribing a treatment technique, such as the corrosion control technique set out in this proposal. However, although the long-term goal for these systems is to comply with NPDWRs with centrally treated and distributed water, under this proposal EPA would allow the State to require the use of POU devices or bottled water to avoid an unreasonable risk to health, as a condition of receiving a variance or an exemption. This may be especially appropriate in the case of exemptions for small systems, i.e., systems with less than 500 connections, because their exemptions may be extended for one or more two-year periods. The goal of application of non-central treatment or bottled water is to provide water of equivalent quality to that which would be provided by a traditional well-operated central treatment facility.

In prescribing the use of POU devices, the State would be required to impose the conditions outlined below. If a PWS distributes bottled water as a control measure, the PWS must ensure that one of the following conditions is met:

(1) The bottled water must be subject to a monitoring program that provides adequate assurances that the water meets all MCLs. The public water system must monitor the bottled water for lead and copper and all other MCLs in the first quarter that it supplies water to the public, and annually thereafter. Results of the monitoring program would be provided to the State annually; or

(2) The public water system must receive a certification from the bottled water company that (a) the bottled water supplied has been taken from an "approved source" as defined in 21 CFR 129.3(a); (b) the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g)(1)-(3); and (c) the bottled water does not exceed the MCLs or quality limits set out in 21 CFR 103.35. The public water system would be fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water system including delivery via a door-to-door bottled water delivery system.

These conditions constitute the minimum standards for protection of public health.

Point-of-entry devices for removal of lead or copper from drinking water would not be allowed to achieve compliance with this proposed rule because they do not prevent lead or copper from entering the water after it leaves the device. Many such devices provide reverse osmosis (RO) or ion exchange treatment, and can actually make water more corrosive, potentially resulting in higher lead levels at the tap.

VIII. State Implementation

The primary implementation agencies for drinking water regulations are the States. Fifty-four out of 57 jurisdictions have applied for and received primary enforcement responsibility for the public water supply supervision program (primacy). To implement the federal regulations for drinking water contaminants, States must adopt their own regulations which are at least as stringent as the federal regulations. This section of today's proposal describes the provisions the States would be required to adopt to implement this proposed rule.

One of the deficiencies in the existing program implementation regulations in 40 CFR Part 142 which EPA plans to correct in an NPRM later this year is that the regulations do not require States with primacy to revise their programs following EPA promulgation of new or revised NPDWRs or to adopt the new or revised requirements, nor do they specify a procedure for doing so. EPA intends to propose amendments which would require States to revise their programs following the promulgation of new or revised NPDWRs to maintain primary enforcement responsibility. Under the SDWA, EPA has had a strong and continuing policy of approving only those State programs that adopted the full EPA program, e.g., all NPDWRs; States cannot obtain partial or

conditional primacy. EPA intends to continue this "full primacy" policy as it implements the 1986 SDWA amendments. (Partial primacy would be confusing; the State would be implementing part of the program and EPA the other, and it would be unclear which provisions of Federal and state law applied to a given public water system.)

As part of the amendments to the primacy regulations, EPA is planning to propose procedures for revising State programs that are similar to those in Part 142 for obtaining initial primacy. The amendments would require States to meet the basic requirements for obtaining primary enforcement responsibility (see 40 CFR 142.10) for each new or revised NPDWR and any primacy requirements specific to the new or revised NPDWR which EPA has established. It is anticipated that such regulation-specific requirements would be necessary only in those situations where the NPDWR provides flexibility to the State on how to accomplish a particular requirement. If these regulation-specific requirements are needed, EPA will promulgate them at the same time it promulgates the NPDWR. Today's proposal includes regulation-specific requirements that a State would be required to include in a program revision to adopt the proposed lead and copper NPDWRs. EPA solicits comments only on these specific requirements. Comments on the broader changes to the primacy requirements in Part 142 will be solicited when those changes are proposed. Today EPA is also proposing the changes to the reporting and recordkeeping requirements needed to implement the lead and copper NPDWRs. EPA also solicits comments on these requirements. EPA's proposed changes to Part 142 are explained below.

A. Special Primacy Requirements for States To Adopt 40 CFR Part 142, Subpart I—Control of Lead and Copper

The regulations proposed at 40 CFR Part 141, Subpart I, Control of Lead and Copper, provide the State discretion with regard to how the objectives of the rule are achieved. For instance, the State must approve a system's demonstration that it has minimized the corrosivity of its water and must approve the system's final operating parameters. In these cases and other instances where the State has discretion, State regulations would be required to augment the general national regulations to establish enforceable requirements and to inform each public water system to what specific requirements it is subject.

To ensure that the State program includes all the elements necessary for an effective, enforceable program, this notice proposes that to obtain approval of a program revision to adopt the NPDWRs for lead and copper, the State's request for approval would be required to include the following:

(1) The procedure or criteria the State will use for determining the frequency with which a system must monitor, including the monitoring frequency after a system has exceeded the lead or copper MCL. The State must include a procedure for notifying the system of the new monitoring requirements with which it must comply and for enforcing these requirements.

(2) The requirement for a materials evaluation to identify monitoring locations, specifying the elements which must be included in the evaluation. Further, the State must specify how a system can demonstrate to the State that sufficient residences with the required characteristics for monitoring are not available.

(3) The procedures/criteria the State will use to evaluate treatment plans submitted by systems serving more than 3,300 persons, to develop treatment plans for systems serving fewer than 3,300 persons, to approve treatment plans, and to evaluate treatment and public education performed by systems under the treatment plans, in accordance with proposed § 141.85. The State must also specify (a) the criteria it will use to determine that corrosivity has been minimized if the system is still not meeting the no-action levels after installing or improving treatment, and (b) a method of informing the system of its new approved operating parameters.

(4) The criteria the State will use to evaluate data submitted by a system on the effectiveness of its public education program and to determine whether the system must modify subsequent public education efforts.

(5) Procedures the State will use to provide systems serving 3,300 or fewer persons with treatment plans.

B. State Reporting and Recordkeeping Requirements

In this notice, EPA is proposing changes to the existing reporting and recordkeeping requirements to implement the proposed lead and copper NPDWRs. These changes would require States to keep records of:

(1) Any system which has been allowed to reduce the frequency at which it monitors for compliance with (a) the lead and copper MCLs and/or (b) the no-action levels which trigger the

treatment technique requirements, or other approved operating parameters.

(2) Any system which is required to perform increased monitoring and the frequency of that monitoring.

(3) Approvals of treatment plans as specified in proposed § 141.84.

(4) All determinations that systems that have finished implementing treatment plans have begun meeting the no-action levels or have minimized the corrosivity of their water.

(5) All evaluations of public education programs and of all determinations that systems are required to modify subsequent public education programs.

This proposal would also amend the State reporting requirements to implement the lead and copper NPDWRs. States would be required to provide EPA quarterly a list of systems which:

(a) May reduce their monitoring frequency in accordance with proposed § 141.86 (c) and/or (d)(4).

(b) Are required to increase their monitoring frequency in accord with § 141.86(c)(4).

(c) Have received State approval for their treatment plan, or for systems serving 3,300 or fewer persons that have received a treatment plan from the State.

(d) Have successfully demonstrated that optimal corrosion control has been installed. This report should indicate whether the system is now meeting the no-action levels or operating under other parameters approved by the State. In the latter case, the report should specify the new parameters.

States would also be required to report any evaluations of public education programs and any determinations that a system must modify subsequent public education programs. Under the existing regulations, States must provide EPA a summary of violations of primary drinking water regulations; therefore, no additional requirement for reporting violations to EPA is specified in this proposal.

EPA solicits comments on all the proposed changes, including recordkeeping, reporting, and the special primacy requirements, to Part 142 to implement the NPDWRs for lead and copper also proposed today. Comments

should specifically address the appropriateness of these requirements, the effect of these new requirements on State programs, and the ability of the State to implement the requirements of the rule.

C. System Reporting and Recordkeeping Requirements

In order to facilitate implementation and enforcement of the regulations proposed today, water systems would be required to maintain records of and report to the state information relating to the proposed regulation.

Systems that serve more than 500 persons would be required to report to the State the results of all monitoring required by this subpart within 10 days of the end of each calendar quarter the system is in operation for any period of time. Systems that serve 500 or fewer persons would be required to report such results to the State within 10 days of the end of each calendar year such system is in operation for any period of time. All systems would be required to certify that the information submitted is accurate. To the extent systems perform more monitoring than required by the proposed regulations, the systems would be required to include the results of the additional monitoring in their reports to the State. Systems would be required to include the identification and location of sampling sites monitored in their reports of monitoring data.

Systems operating under an approved treatment plan would be required to, according to a schedule established by the State, report to the State the system's progress in completing the treatment plan's interim steps. All systems applying corrosion control treatment, would be required to report any changes in treatment, including changes to treatment for purposes other than corrosion control and cessation of treatment due to mechanical or operating failures, within 14 days of the change in treatment.

Systems operating under an approved treatment plan containing a public education program would be required to report the system's progress in completing the public education program requirements in the reports submitted to the State. If the public education program is being targeted to

particular segments of the consumer population, a description of how this targeting is consistent with the proposed regulations would be required to provide data to the State that indicate that, as a result of the public education program, the users' knowledge about lead in drinking water enables them to alter voluntary their water use patterns to reduce consumption of lead-contaminated water.

The proposed regulations would also establish a general reporting authority, which would allow the Administrator to require a system to establish and maintain such records, reports, or information as the Administrator deems necessary to determine whether the system has acted or is acting in compliance with the proposed regulations.

IX. Review by the Science Advisory Board

As required by the SDWA, EPA's Science Advisory Board (SAB) was offered the opportunity to review this proposal. They met on June 2 and 3 1988 in Cincinnati, Ohio. The SAB's comments will be considered and factored into the final rule together with the comments from the public received during the comment period.

X. Impact of this Regulation

A. Regulatory Impact Analysis

Under Executive Order 12291, this action is a major regulatory action, because it will have a major financial or economic impact on the country. As required by the Executive Order, EPA conducted a Regulatory Impact Analysis (RIA) that is available for review as part of the docket for this rulemaking (EPA 1988a). This regulation has been reviewed by the Office of Management and Budget as required by Executive Order 12291.

Costs

EPA analyzed the economic impact of this regulation in two separate parts: The impact attributable to the control of lead and copper in source water (the "MCL impacts," in Table 19) and the impact attributed to the corrosion control requirements (also shown in Table 19).

TABLE 19.—SUMMARY COST IMPACTS OF PROPOSED LEAD AND COPPER REQUIREMENTS¹

	Lead (5 ug/ l)	Copper (1,300 ug/ l)	Total ²
MCL Impacts			
Systems Affected.....	880	66	950
National Cost of Treatment (\$M):			
Capital.....	320	35	350
O&M (Annual).....	30	3	30
Annualized ³	55	5	60
Annual Cost per Family (\$/yr) by System size (people served):			
Very Small (25-500).....	340	380	
Small (501-3,300).....	91	130	
Medium (3,301-50,000).....	28	70	
Large (Over 50,000).....	9	50	
Treatment Technique Requirement Impacts			
Systems Affected.....	53,000 ⁴		
National Cost of Treatment (\$M):			
Capital.....	630		
O&M (Annual).....	160		
Annualized.....	210		
Optimization Demonstrations (Annual in \$M).....	2		
Public Education (Annual in \$M).....	12		
Annual Cost per Family (\$/yr) by System size (people served):			
Very Small (25-500).....	27.0		
Small (501-3,300).....	4.6		
Medium (3,301-50,000).....	2.5		
Large (Over 50,000).....	0.7		
Total Cost of Rule (\$M):	MCL	Corrosion control	Total
Capital.....	350	630	980
O&M (Annual).....	37	160	200
Annualized.....	60	220	⁵ 280

¹ Costs are expressed in 1988 Dollars. Totals may not tally due to independent rounding.

² Assuming no co-occurrence of lead and copper.

³ Annual cost of capital 3% over 20 years plus 1 year of O&M.

⁴ Includes double counting of some systems which will have to treat for source water contamination as well as for concentrations at the tap exceeding the no-action level. 42,978 systems are estimated to install treatment, and conduct public education programs and optimization demonstrations only.

⁵ Includes annualized capital, O&M, optimization demonstration, and public education costs, but excludes state implementation costs of \$16 m per year.

It is estimated that about 880 systems would exceed the proposed MCL for lead at the entry point to the distribution system and thus need to treat their source water. About 66 systems would exceed the proposed MCL for copper at the entry point to the distribution systems and thus need to treat their source water. On an annualized basis, the compliance costs for the lead and copper MCLs would be about \$60 million.

There are cost impacts associated with the treatment technique (corrosion control and public education) requirements as well. These impacts have been broken into three tiers, reflecting the stepped nature of the proposal and its alternatives. Systems would incur treatment costs when they fail to meet the no-action levels. Approximately 53,000, or 66 percent of all systems would be expected to incur costs under the proposed treatment technique requirements. On an annualized basis, corrosion control treatment optimization demonstration and public education would result in costs of about \$221 million.

Monitoring costs would be incurred by all of the approximately 79,000 community and non-transient, non-community systems. EPA estimates that the national annualized cost of

monitoring for this proposal would be about \$12 million per year (Table 20).

Table 20.—Monitoring Costs of the Proposed Lead and Copper Requirements*

Systems Affected.....	79,000
National Cost (\$M1988)	
Annual Monitoring.....	12
Cost per Family by System Size (\$1988/year/Household)	
Very Small (25-500).....	\$0.88
Small (501-3,300).....	0.30
Medium (3,301-50,000).....	0.19
Large (over 50,000).....	0.02
Total Annual Cost of Monitoring (\$M1988)	
Very Small (25-500).....	\$1.60
Small (301-3,300).....	2.20
Medium (3,301-50,000).....	6.90
Large (over 50,000).....	1.40

* Rounded to two significant digits.

The entire proposal, including both the MCL and treatment technique requirements for lead and copper, would require about 54,000 systems to add \$980 million in capital equipment, and incur \$200 million per year to operate and maintain it. Monitoring costs are expected to be \$12 million per year. State implementation costs are estimated to increase by approximately \$16 million. On an annualized basis, the

cost of the rule is expected to be nearly \$280 million for capital, operation and maintenance, monitoring, and State implementation.

The uncertainty in the costs, particularly for small systems, has not been fully evaluated. Based on comments and further analysis, an addendum to the draft Regulatory Impact Analysis to be completed when this rule is promulgated will evaluate these uncertainties.

Benefits

The systems that incur the costs of complying with the proposed rule are likely to be the same systems that experience the health and materials benefits. The materials benefits of this regulation may be as high as \$500 million per year. These benefits would pay for the entire cost of this rule if considered on a national basis.

The Agency evaluated the expected health benefits of the proposed rule. The Agency estimated the number of children who would be expected to experience decreased blood lead levels as a result of reduced water lead levels. In particular, EPA examined the effects of changing the water lead distribution experienced by people served by systems which are expected to install or improve corrosion control treatment

after missing the no-action levels. In the first step of the analysis, EPA estimated the proportion of children expected to have their blood lead levels reduced to below 10, 15, or 25 ug/dl as a result of reductions in water lead levels (Marcus and Holtzman, 1988). EPA estimates that about 138 million people are served by PWSs that would be expected to install corrosion control treatment (EPA 1988a). Of these, about 8.8 million are children aged 6 months to 5 years. Therefore, EPA estimates that 264,000 to 704,000 children in this age group would have blood lead levels reduced to below 10 ug/dl, 88,000 to 176,000 children would

have their blood lead levels reduced to below 15 ug/dl, and 3,500 to 5,300 would have blood lead levels reduced to below 25 ug/dl. The estimates are presented in a range to reflect the uncertainty regarding the water lead levels that would result from compliance with the proposal.

Other groups of the exposed public would also be expected to experience benefits from the proposed rule, including fetuses, infants, older children, and adults. The particular types of health effects that would be avoided by these persons are discussed in *Reducing Lead in Drinking Water: A Benefits*

Analysis (EPA, 1986a). However, the Agency has not calculated the proportion or number of persons in each of these categories who would be brought below specified blood lead levels.

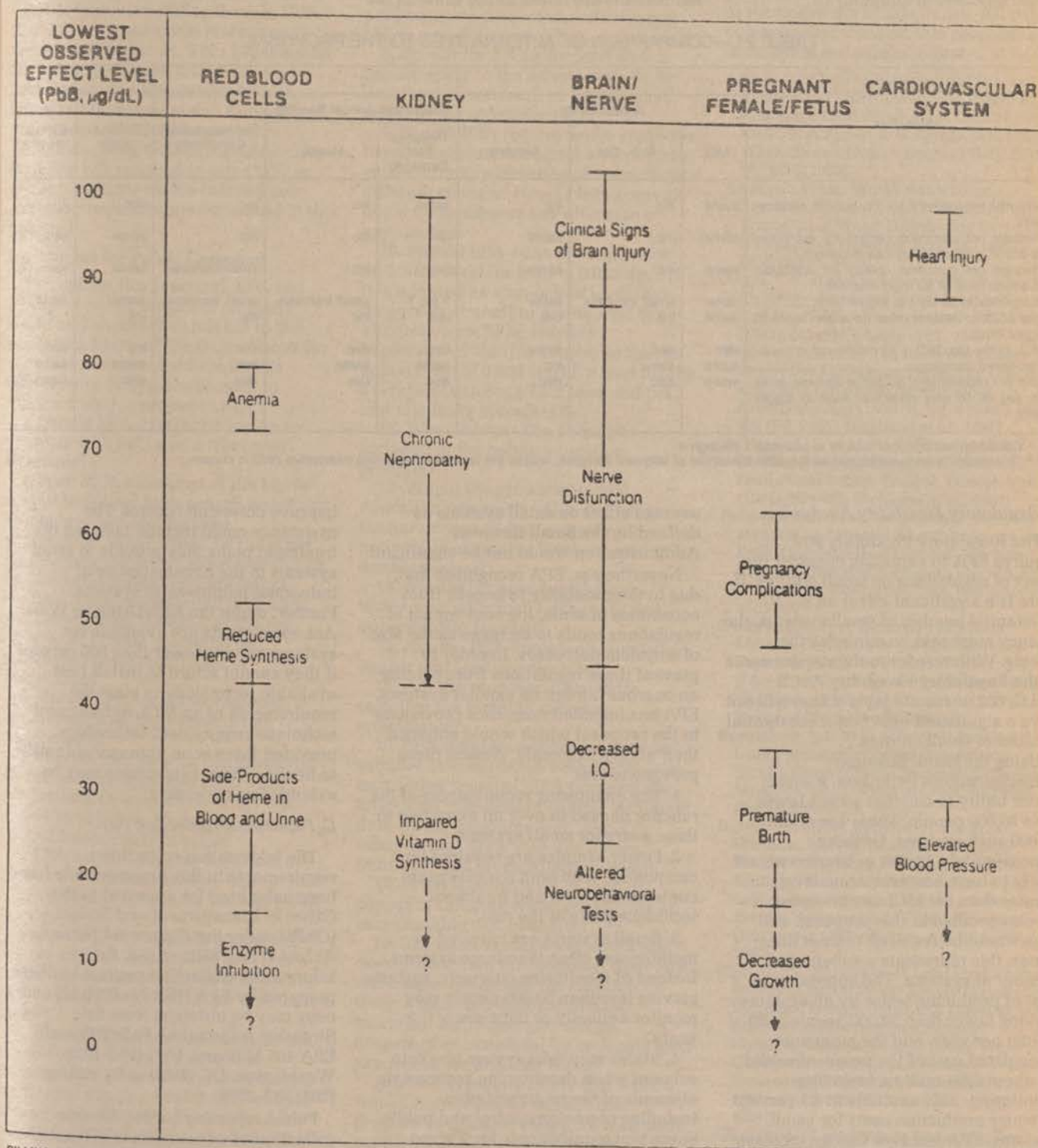
Figure 4 summarizes the health effects associated with various blood lead levels of concern. These include reduced IQ and stature decrements in children, premature birth, low birthweight, slowed mental and physical development in fetuses and infants, and hypertension in adult men.

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Figure 4

ADVERSE HEALTH EFFECTS OF LEAD



The Agency also considered the relative benefits of the proposed approach compared to those which might be expected to occur if one or more of the alternatives discussed above were adopted. In each case, the actual outcome of adopting an

alternative approach is uncertain. Therefore, Table 21 presents a qualitative comparison of the proposal with the alternatives. Costs, benefits, administrative complexity, and enforceability are considered. Expected net benefits are listed as the same as the

proposal, less than the proposal, or greater than the proposal. For example, difficult problems of implementation could limit the reductions in water lead levels that might otherwise be expected from adoption of an alternative.

TABLE 21.—COMPARISON OF ALTERNATIVES TO THE PROPOSAL

Alternative	1			2		3	4	5
	Annual Costs			Theoretical Annual Benefits		Administrative Complexity	Enforceability	Expected Benefit ¹
	MCL	Corr. Ctrl	Monitrng	Reduced Mat Damages	Health			
1. National requirement for Pb service replacement.	same	inc	inc	same	inc	inc	dec	?
2. Require opt corrosion control for additional no-action level of 20 ug/l as maximum. ²	same	inc	same	inc	inc	inc	same	same (?)
3. Require opt corrosion control for additional no-action level of 30 mg/l alkalinity.	same	inc	same	inc	inc	small increase	same	same (?)
4. Raise max to 30 ug/l to trigger trmt.	same	small increase	same	? inc ?	small increase	small increase	same	same (?)
5. Max of 20 to replace other no-action levels to trigger trmt.	same	inc	dec	inc	inc	inc	inc	?
6. MCL at the tap, MCL=30 maximum.	dec	dec	same	dec	dec	dec	inc	dec
7. Two-tiered sampling.	same	same	inc	same	same	inc	same	same (?)
8. Elim pH requirement, guidance assume or as Pb avg of 10 only no-action level to trigger trmt.	same	dec	dec	dec	dec	dec	dec	same (?)

¹ Considers net effect of factors in columns 1 through 4.

² "Maximum" means measured as the 95th percentile of targeted samples, unless the two-tiered sampling alternative (#6) is chosen.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires EPA to explicitly consider the effect of regulations on small entities. If there is a significant effect on a substantial number of small systems, the Agency must seek to minimize the effects. With respect to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 602 *et seq.*, today's action will not have a significant effect on a substantial number of small entities.

Using the Small Business Administration's definition, a small water utility is one that serves fewer than 50,000 people. There are about 78,000 such systems. Of these, approximately 53,000, or 68 percent, are likely to have contamination levels greater than the MCLs or no-action levels specified in this proposal, and thus would be required to treat their water; this represents a substantial number of systems. The approximate cost of producing water by all systems serving fewer than 50,000 people is \$9 billion per year, and the maximum annualized cost of the proposal would be about \$281 million, including monitoring. This amounts to 3.1 percent of water production costs for small systems. EPA believes that an increase of this magnitude does not represent a significant economic impact. Therefore, although the rule will affect a substantial number of small systems, the

average effect on small systems as defined by the Small Business Administration would not be significant.

Nevertheless, EPA recognizes that, due to their inability to benefit from economies of scale, the cost impact of regulations tends to increase as the size of a system decreases. In order to prevent these regulations from placing an onerous burden on smaller systems, EPA has included numerous provisions in the proposal which would enhance their ability to comply. Among these provisions are:

1. The monitoring requirements of the rule are phased in over an extra two to three years for small systems.

2. Fewer samples are required for compliance with both the maximum contaminant level and treatment technique parts of the rule.

3. Small systems are required to monitor less often than large systems. Instead of monitoring quarterly, systems serving less than 50,000 people may monitor annually or once every five years.

4. States may take system size into account when determining appropriate elements of the treatment plan, including corrosion control and public education requirements for a given system.

The Agency encourages States to provide technical assistance to small systems which need to install or

improve corrosion control. The assistance could include tailoring the treatment plans they provide to small systems to the circumstances of individual public water systems. Further, under the Safe Drinking Water Act, exemptions are available for systems serving fewer than 500 persons if they cannot afford to install best available technology to meet the requirements of an MCL or treatment technique requirement technology, provided there is no unreasonable risk to health. These exemptions may be extended as necessary.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection request has been prepared by EPA (ICR No 0270.12) and a copy may be obtained from Eric Strassler, Information Policy Branch; EPA 401 M Street, SW. (PM-223); Washington, DC 20460 or by calling (202) 382-2709.

Public reporting burden for this collection of information is estimated to vary from an average of 1 to 1.4 hours per response, including time for reviewing instructions, searching existing data sources, gathering and

maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

XI. Request for Public Comment

Throughout this proposal, EPA has requested public comment on many issues and approaches related to this regulation. Many of the major issues for comment are repeated here for the convenience of those who wish to comment on this proposed rule.

1. Should EPA control corrosion by-products with MCLs or a treatment technique?

2. Is an MCL measured at the tap to control both lead from source water and as a by-product of corrosion appropriate? What would be the basis for selecting the level? What monitoring requirements should apply? Should systems that have installed BAT and still cannot meet the MCL at the tap because of private plumbing be considered permanently out of compliance?

3. Should EPA establish national requirements for lead service line replacement?

4. EPA solicits data on contributions of lead service lines and other lead connections to lead levels at the tap, and on lead levels after corrosion control treatment is in place.

5. EPA solicits data on the effect of partial and full lead service line replacement programs on lead levels at the tap.

6. Should EPA reduce to 500 ml the sample size for determining whether a system meets the no-action levels and/or the source water MCLs for distributed water?

7. Should EPA adopt one or more of the following alternatives to this proposal: Treating the fourth no-action level, a maximum of 0.020 mg/l of lead measured as the 95th percentile of targeted samples, the same as the first four no-action levels; adding total alkalinity of 30 mg/l as an additional no-action level to trigger treatment; requiring a system to replace lead

service lines and connections that are found to contribute significantly to lead in tap water even after installation of optional corrosion control; a two-tiered approach to monitoring which may increase the efficiency of sampling, so fewer samples might be required of most public water systems; and eliminating pH as a no-action level?

8. Should the MCLs for lead and copper apply at the entry points to the distribution system or to fully flushed water at the consumer tap?

9. Should EPA require water suppliers to adjust corrosion control treatment to account for any blending of water from different sources? How? Please provide any data to support any alternative approaches.

10. Should EPA raise the maximum no-action level for lead to 0.030 mg/l (if it is adopted as a no-action level that triggers treatment) to assure that this alternative could be feasibly implemented; and/or substitute the no-action level of 0.020 mg/l for lead for the average of 0.010 mg/l for lead and pH and alkalinity measures?

11. What information should be included in the public education program?

12. Would the proposed public education program and/or any other similar actions reduce exposure to potentially excessive levels of lead in drinking water?

13. Are the proposed analytical techniques technically adequate and economically feasible?

14. Are the PQL acceptance limits for copper and lead appropriate?

15. Are the proposed criteria for selecting the targeted samples appropriate?

16. EPA requests additional data on samples in accordance with EPA's lead monitoring protocol. EPA is especially interested in corrosion control treatment data which compares lead levels in morning first draw samples before treatment and levels after treatment.

17. What specific level of lead or copper in drinking water constitutes an unreasonable risk to health?

18. Should EPA allow variances and exemptions from the proposed rule? Are there other conditions (in addition to those described) under which the treatment technique may not be necessary or beneficial for reducing lead exposures via drinking water?

19. Are the requirements that a State would be required to include in a program revision to adopt the lead and copper NPDWRs proposed in this regulation appropriate?

21. What will be the effects of the proposed requirements on State programs?

XII. References

The following references are referred to in this notice and are included in the public docket together with other correspondence and information. The public docket is available as described at the beginning of this notice. All public comments received on this proposal are included in the public docket.

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List of Subjects in 40 CFR Parts 141 and 142

Chemicals, Reporting and recordkeeping requirements, Water supply, Administrative practice and procedure, Incorporation by reference.

Dated: August 9, 1988.

Lee M. Thomas,
Administrator.

For the reasons set forth in the preamble, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300g-1, 300g-3, 300g-6, 300j-4, and 300j-9.

2. Section 141.2 is amended by removing the paragraph designations and placing the definitions in alphabetical order, by revising the definitions of "maximum contaminant level," and adding the following new definitions in alphabetical order to read as follows:

§ 141.2 Definitions.

"Corrosion inhibitor" means a substance, such as zinc orthophosphate, capable of reducing the corrosivity of water toward plumbing materials, for example, by forming a protective film on the interior surface of the plumbing materials.

"Distributed water" means water entering the water distribution system after any treatment that may be applied.

"Ends of the distribution system" means areas of the distribution system with low or no water flow in water mains.

"Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to any user of a public water system.

"Morning first draw sample" means a sample of tap water that has been standing in plumbing pipes for 8 to 18 hours and is collected without flushing.

"Optimal corrosion control treatment" is corrosion control treatment which minimizes lead levels in targeted samples.

"pH" means the condition represented by the negative logarithm of the

effective hydrogen-ion concentration or hydrogen-ion activity expressed in gram equivalents per liter. pH is used to express both acidity and basicity on a scale whose values run from 0 to 14 with 7 representing neutrality; numbers less than 7 indicate a more acidic solution, and numbers greater than 7 indicate a more basic solution.

"Residence," for the purpose of Subpart I of this part only, means, in the case of a community water system, a house or other dwelling unit. In the case of a non-transient non-community water system, residence means any building served by the public water system.

"Service connection" means the pipe, gooseneck, pigtail, and any other fitting connecting the water main to the building inlet.

"Service connection sample" means a sampling of water that has been standing for 8-18 hours in the building service connection.

"Targeted sample" is a sample taken in accordance with § 141.86(d).

3. Section 141.32 is amended by reserving paragraphs (e)(10)-(12) and adding paragraphs (e)(13) and (14) to read as follows:

§ 141.32 Public notification.

(e) ***

(10)-(12)—[Reserved]

(13) *Lead.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lead is a health concern at certain exposure levels. Lead is a soft, dull, gray metal that has frequently been used in water supply plumbing materials, especially flux, solder, pipes, and brass and bronze fixtures. Lead usually contaminated drinking water as a result of the corrosion of these plumbing materials by the water they carry. Lead has been shown to cause a variety of adverse health effects in humans and animals. In humans, lead has been shown to interfere with the formation of red blood cells (heme synthesis), cause anemia, cause kidney damage, impair reproductive function, reduce birth weight, cause premature birth, delay physical and mental development in babies and young children, impair mental abilities in children, and increase blood pressure in adults. Many of these effects have been observed at relatively low exposure levels. Studies on animals indicated that

lead may also cause cancer at high doses. EPA has set an enforceable drinking water standard at 0.005 ppm (parts per million) for lead leaving the treatment plant and entering the distribution system. EPA also requires public water systems to treat their water to minimize lead contamination resulting from corrosion of plumbing materials when lead in tap water that has been standing overnight exceeds an average of 0.010 ppm. Drinking water that meets these standards is associated with little of this risk and should be considered safe to drink.

(14) *Copper.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that copper is a health concern at certain exposure levels. Copper is an orange metal that is commonly used for plumbing pipes in homes and other buildings. Copper generally contaminates drinking water as a result of the corrosion of copper pipes by the water they carry. When copper corrodes, the water and sink are often stained green. Copper is an essential nutrient, but at higher doses it has been shown to cause stomach and intestinal distress, liver and kidney damage and anemia. Persons with Wilson's disease may be at higher risk from copper toxicity than the general public. EPA has set an enforceable drinking water standard for copper at 1.3 ppm (parts per million) for water leaving the treatment plant and entering the distribution system. EPA also requires public water systems to treat their water to control copper contamination resulting from the corrosion of plumbing materials when copper in tap water that has been standing overnight exceeds 1.3 ppm in more than 5 percent of samples. Drinking water that meets this standard is associated with little to none of this risk and should be considered safe to drink.

4. A new Subpart I is added to read as follows:

Subpart I—Control of Lead and Copper

Sec.

- 141.80 Applicability.
- 141.81 MCLGs for lead and copper.
- 141.82 MCLs and BAT for lead and copper.
- 141.83 Treatment technique requirement.
- 141.84 Treatment plan.
- 141.85 Public education program.
- 141.86 Analytic and monitoring requirements for lead and copper MCLs and treatment technique requirements.
- 141.87 Reporting and recordkeeping.

Subpart I—Control of Lead and Copper**§ 141.80 Applicability.**

Unless otherwise indicated, each of the provisions of this subpart applies to community water systems and non-transient non-community water systems (hereinafter referred to as "systems").

§ 141.81 MCLGs for lead and copper.

The maximum contaminant level goals (MCLGs) for lead and copper are as follows:

Contaminant	MCLG in mg/l
(1) Lead	Zero.
(2) Copper	1.3

§ 141.82 MCLs and BAT for lead and copper.

(a) The following MCLs for lead and copper apply to water entering the distribution system, after any treatment:

Contaminant	MCL in mg/l
(1) Lead	0.005
(2) Copper	1.3

(b) The Administrator, pursuant to section 1412(b)(6) of the Act, hereby identifies the following as the best technology, treatment technique, or other means available (BAT) for achieving compliance with or issuing variances from the MCLs for lead and copper:

Contaminant	BAT
(1) Lead	(¹), (²), (³), (⁴)
(2) Copper	(¹), (²), (³), (⁴)

Key to BATs in Table.
¹ = Coagulation/Filtration.
² = Ion Exchange.
³ = Lime softening.
⁴ = Reverse Osmosis.

§ 141.83 Treatment technique requirement.

(a) This rule establishes a treatment technique requirement to control lead and copper as corrosion byproducts. The treatment technique requirement consists of optimal corrosion control treatment (to minimize lead in drinking water) and public education (to reduce exposure to lead in drinking water). A system that meets the no-action levels specified in paragraphs (b)(1)(i)-(iv) of this section is deemed in compliance with the treatment technique requirement of this paragraph.

(b) The specific steps a system must take to comply with the treatment

technique requirement of paragraph (a) of this section depend on the lead level, copper level, and pH measured as specified in § 141.86 (a) and (d) of this part. These steps are set out below:

(1) The no-action levels are as follows:

(i) The arithmetic average lead level of the required samples is less than or equal to 0.010 mg/l;

(ii) The lead level in at least 95 percent of the required samples is less than or equal to 0.020 mg/l;

(iii) The copper level in at least 95 percent of the required samples is less than or equal to 1.3 mg/l;

(iv) The pH is greater than or equal to 8.0 in at least 95 percent of the required samples.

(2) If a system cannot meet one or more of the no-action levels specified in paragraph (b)(1) of this section, it must obtain and implement a State-approved treatment plan, as specified below:

(i) If the arithmetic average lead level in the required samples exceeds 0.010 mg/l, the State-approved treatment plan must require the system to install optimal corrosion control treatment, as specified in § 141.84 of this part, and to conduct a public education program, as specified in § 141.85 of this part.

(ii) If the lead level exceeds 0.020 mg/l in more than five percent of the required samples, the State-approved treatment plan must require the system to conduct a public education program, as specified in § 141.85 of this part.

(iii) If the lead level exceeds 1.3 mg/l in more than five percent of the required samples, the State-approved treatment plan must require the system to install optimal corrosion control treatment, as specified in § 141.84 of this part.

(iv) If the pH is less than 8.0 in more than five percent of the required samples, the State-approved treatment plan must require the system to install optimal corrosion control treatment, as specified in § 141.84 of this part.

(c) Each system must meet the no-action levels specified in paragraph (b)(1) of this section, or submit or apply for a State-approved treatment plan as specified in § 141.84 of this part, according to the following schedule (which corresponds to one year after the monitoring required by § 141.86(b) of this part is to be completed):

System size (# persons served)	Deadline
> 3,300	(enter date 27 months after publication of final rule).
500-3,300	(enter date 39 months after publication of final rule).

System size (# persons served)	Deadline
< 500	(enter date 51 months after publication of final rule).

(d)(1) A system that fulfills the treatment technique requirements of paragraph (a) of this section by meeting the no-action levels in paragraph (b)(1) of this section, by the deadline specified in paragraph (c) of this section, and fails to meet one or more of the no-action levels during a subsequent monitoring period (the length of the monitoring period, which varies by system size and system type, is specified in § 141.86 of this part), must comply with paragraph (b)(2) of this section. Such a system must submit or apply for a State-approved treatment plan under § 141.84 of this part within one year after any such failure to meet the no-action level(s).

(2) A system that meets the no-action levels in paragraph (b)(1) of this section after implementing a treatment plan approved by the State under § 141.84 of this part must continue to meet the no-action levels each subsequent monitoring period.

Failure to meet one or more of the no-action levels is a violation of the treatment technique requirement.

(3) A system that does not meet the no-action levels after implementing the treatment plan approved by the State under § 141.84 of this part and demonstrating to the State that it has minimized the corrosivity of its water toward lead must operate within the parameters approved by the State as optimal for reducing corrosion of lead. Failure to operate within one or more of the parameters is a violation of the treatment technique requirement.

§ 141.84 Treatment plan.

The treatment plan describes the specific steps a system must take to comply with the treatment technique requirement in § 141.83(a) of this part and specifies a schedule for completing these steps for systems that do not meet one or more no-action levels specified in § 141.83(b) of this part. Failure to complete any step by the deadline specified in the plan for that step is a violation of the treatment technique requirement.

(a)(1) As specified in § 141.83(b)(2) of this part, the treatment plan must require optimal corrosion control treatment when:

(i) The system exceeds the no-action average lead level as specified in § 141.83(b)(1)(i) of this part;

(ii) The system exceeds the no-action copper level as specified in § 141.83(b)(1)(iii) of this part; or

(iii) The system fails to meet the no-action pH level as specified in § 141.83(b)(1)(iv) of this part.

(2) Systems serving more than 3,300 persons must develop and submit a treatment plan to the State for review and approval. The treatment plan must explain how the system will achieve the following steps, and provide a schedule for completing each step:

(i) Design and implementation of appropriate pipe loop, laboratory, pilot scale, and/or field studies demonstrating reductions of lead levels in simulated morning first draw and service connection samples that correspond to application of various corrosion control treatments, such as:

(A) pH adjustment;

(B) Alkalinity adjustment; and/or

(C) Addition of corrosion inhibitors;

(ii) Analysis of the data generated in paragraph (a)(2)(i) of this section that identifies the water quality conditions under which lead levels in morning first draw and service connection samples are expected to be minimized;

(iii) Installation and operation of corrosion control treatment in the water supply system as a whole to ensure delivery to residences of water meeting the water quality conditions identified in paragraph (a)(2)(ii) of this section within three years after the State approves the treatment plan;

(iv) Monitoring to determine the effectiveness of the corrosion control treatment by comparing lead levels in morning first draw and service connection samples at residences designated for monitoring, as specified in § 141.86 of this part, after installation of corrosion control treatment with:

(A) The no-action levels for lead specified in § 141.83(b)(1) of this part, and

(B) The lead levels in morning first draw and service connection samples predicted based on the analysis performed in paragraph (a)(2)(ii) of this section;

(v) Additional adjustment of the corrosion control treatment if the lead levels in morning first draw or service connection samples from residences designated for monitoring, as specified in § 141.86 of this part, exceed the no-action level specified in § 141.83(b)(1)(i) of this part; and

(vi) If the system is still exceeding the no-action levels after application of all treatment, an analysis of all treatment and resulting lead levels must be prepared and submitted to the State.

(3) For systems serving 3,300 or fewer persons, the system must request a

treatment plan from the State. The State will specify the required treatment. The treatment plan must include the following steps, and a schedule for completing each step:

(i) Installation and operation in the water supply system of the corrosion control treatment specified by the State (such as pH control, alkalinity control, and/or use of corrosion inhibitors) within three years after the State issues the treatment plan;

(ii) Monitoring to determine the effectiveness of the corrosion control treatment by comparing lead levels in morning first draw and service connection samples at residences designated for monitoring, as specified in § 141.86 of this part, after installation of corrosion control treatment with the applicable no-action levels for lead specified in § 141.83(b)(1) of this part; and

(iii) Additional adjustment of the corrosion control treatment if the lead levels in morning first draw or service connection samples from residences designated for monitoring, as specified in § 141.86 of this part, exceed the no-action level specified in § 141.83(b)(1)(i) of this part.

(4) If lead levels in morning first draw or service connection samples continue to exceed the no-action level specified in § 141.83(b)(1)(i) of this part after completion of the steps described in paragraph (a)(2) of this section (for systems serving more than 3,300 persons) or paragraph (a)(3) of this section (for systems serving 3,300 or fewer persons), the State must evaluate the treatment and monitoring data and determine whether the corrosion control treatment applied by the system is optimal, i.e., minimizes the corrosivity of water towards lead. If the State determines that the system has minimized the corrosivity of water towards lead i.e., the treatment is optimal, the system must continue to operate within the parameters specified by the State as constituting optimal treatment. Final operating parameters specified by States must account for seasonal variations in water corrosivity and lead levels.

(5) Systems serving more than 3,300 persons that wish to change other concurrent treatments that might reduce the effectiveness of the approved corrosion control treatment, or experience significant change in the population served or in the extent of the distribution system, would be required to submit to the State for approval new corrosion control data from studies which reflect the new conditions under which the supplier wished to operate, except for temporary changes required

to respond to an emergency situation. Permanent operating conditions must assure that treatment is optimal. Temporary changes in treatment must be reported to the State within five days. Changes in treatment lasting more than five days are considered permanent changes in treatment.

(6) Systems serving less than 3,300 persons that wish to change other concurrent treatments that might reduce the effectiveness of the approved corrosion control treatment, or experience significant change in the population served or in the extent of the distribution system, would be required to notify the State of the proposed changes. States may disapprove the changes and require any modifications necessary to assure that treatment is optimal.

(7) States may, at their discretion, periodically review and revise approved treatment plans and final operating parameters as warranted, to ensure that no-action levels continue to be met or that treatment remains optimal.

(b)(1) The treatment plan must contain public education provisions when:

(i) A system exceeds the no-action average lead level specified in § 141.83(b)(1)(i) of this part; or

(ii) A system exceeds the no-action maximum lead level specified in § 141.83(b)(1)(i)(ii) of this part.

(2) A system must conduct a public education program in accordance with its State-approved treatment plan once the State approves it (for systems serving more than 3,300 persons) or issues it (for systems serving 3,300 or fewer persons), as long as paragraph (b)(1)(i) or (ii) of this section applies.

(3) The portion of the treatment plan that addresses the public education program must conform to the requirements of § 141.85 of this part.

§ 141.85 Public education program.

The public education program must be designed to provide users served by the system with information that will enable them to modify their water use behavior or take other measures to mitigate the risks to human health associated with excess levels of lead in drinking water that cannot be controlled by central water treatment.

(a) *Targeting of the public education program.* Community water systems must either:

(1) Direct the public education program required by this section to the entire population of users served by the system; or

(2) Based on the results of the materials evaluation described in § 141.86(d) of this part or any other

information available to the system, target the public education program to particular segments of the consumer population that may be receiving drinking water at the tap that exceeds the no-action levels of § 141.83(b)(1)(i) or (ii) of this part. A community water system must identify such segments on the basis of factors that include but are not limited to:

(i) Known increased potential for exposure to excess levels of lead in drinking water (e.g., areas where lead service lines are known to exist, areas where very new or very old buildings exist, areas located at the ends of the water distribution system); or

(ii) Known to be more susceptible to the adverse effects of lead (e.g., children, pregnant women, or groups of individuals exposed to additional sources of lead, including occupational exposure or other environmental exposure).

(b) *Supplemental monitoring and notification of results.* (1) As part of the public education program, community water systems must offer to sample or arrange to have sampled by a certified Laboratory the water of any customer who requests it to determine the lead content of drinking water at the customer's residence. The system is not required to pay for the sampling or analysis, nor is the system required to collect and analyze these samples itself.

(2) Each customer whose residence is sampled as part of the system's compliance monitoring, as specified in § 141.86 of this part, and each customer who requests supplemental monitoring, as specified in paragraph (b)(2) of this section, must be informed of the results of the analysis performed on his or her residence.

(c) *Content of the public education program.* The public education program required of community and non-transient non-community systems by this section must include but is not limited to the following:

(1) Information explaining the causes of excess levels of lead in drinking water. Such causes include but are not limited to:

(i) Excess levels of lead in source water;

(ii) The corrosivity of water toward plumbing materials containing lead;

(iii) The presence of lead pipes or connections;

(iv) The existence of newly-installed lead solders (generally less than five years old);

(v) Water remaining in contact with plumbing containing lead for extended periods of time;

(vi) The use of water from the hot water tap for consumption; and

(vii) Grounding of electrical systems to lead-bearing plumbing.

(2) Information explaining the potential health effects of exposure to excess levels of lead. Such effects include but are not limited to:

(i) Delayed neurological and physical development in children and infants;

(ii) Impaired cognitive performance in children (as measured by IQ tests, performance in school, and other means);

(iii) Elevations in blood pressure in adults;

(iv) Interference with heme synthesis (the ability of blood to absorb oxygen);

(v) Interference with vitamin D metabolism;

(vi) Anemia (low red blood-cell count);

(vii) Kidney damage;

(viii) Impaired reproductive function;

(ix) Complications in pregnancy and other fetal effects; and

(x) Potential carcinogenicity.

(3) Information explaining that the risks associated with lead in drinking water may be aggravated by exposure to lead from other sources. These sources include but are not limited to:

(i) Occupational or home hobby exposures (e.g., exposure from smelting, electronics, or other operations that involve the use of lead);

(ii) Inhalation of airborne lead from paint dust, leaded gasoline engine exhaust, and smelter or battery recycling; and

(iii) Ingestion of lead from lead paint chips, lead that settles out of the air as dust and dirt, and lead-contaminated crops and foodstuffs, including contamination from lead-soldered food containers and improperly glazed pottery.

(4) Actions that have been taken by the system or community to evaluate, quantify, or reduce the levels of lead in drinking water. Such actions include but are not limited to:

(i) Modifications to the applicable plumbing code to ban the use of lead solders, fluxes, and pipes, pursuant to the lead ban of Subpart E of this part;

(ii) Compliance monitoring conducted pursuant to § 141.86 of this part and any supplemental monitoring conducted pursuant to paragraph (b) of this section; and

(iii) Other actions the system has taken to evaluate, quantify, or reduce the levels of lead in drinking water.

(5) Information that the user may use to evaluate the probability that excess levels of lead exist in the user's drinking water supply. Such information must include the likelihood that excess lead levels exist in water as it leaves the system and the potential for further

increases in lead levels as a result of corrosion of water distribution system components. In addition, the public education program must recommend that the user:

(i) Determine whether the user's faucets, water holding tanks, service lines, pipes, and soldered joints contain lead;

(ii) Contact the system for additional information; and

(iii) If the potential for excess levels of lead in the user's drinking water appears to be substantial, have the user's water analyzed to determine the water's lead content.

(6) Actions that the user can take to reduce short-term and long-term exposures to lead in drinking water. Such actions include but are not limited to:

(i) Flushing each water tap for at least three minutes, or until the water is as cold as it will get, before any water from that tap is consumed or used for any type of cooking or preparation of food, beverages (including ice), or baby formula;

(ii) Replacing privately-owned and privately-controlled lead service lines with pipes that are lead-free;

(iii) Ensuring that all plumbing repair work is performed using lead-free pipe, solder, and flux (as defined in Subpart E of this part); and

(iv) If allowed by the local electrical code, providing an electrical ground for the user's wiring other than the user's plumbing system.

(d) *Delivery of the public education program by community water systems.*

(1) Community water systems must deliver the public education program in a form that is tailored to the nature and size of the target population, as determined under paragraph (a) of this section. The system must present all materials associated with the public education program in plain English (and in other languages where appropriate) that can be understood readily by the layperson. The means by which the system delivers the public education program may include but are not limited to:

(i) Public service announcements broadcast on radio and television stations;

(ii) Public announcements published in local newspapers;

(iii) Public meetings;

(iv) Informational notices in water utility bills;

(v) Pamphlets or brochures; and

(vi) In combination with the means specified in paragraphs (d)(1) (i) through (v) of this section, local telephone hotlines.

(2) When designing and implementing a public education program, community systems water must, to the extent practicable, coordinate with appropriate local authorities including but not limited to:

- (i) The city, county, or municipal council;
- (ii) The Mayor's, City Administrator's, or County Commissioners' office;
- (iii) The local department of public health;
- (iv) The local department of environmental protection; and
- (v) The local government office responsible for administering lead-screening programs, if not listed elsewhere in this paragraph.

(3) Community water systems must repeat public education programs at least quarterly as long as the level of lead in drinking water exceed one or both no-action levels specified in § 141.83(b)(1) (i) and (ii) of this part during the previous monitoring period.

(e) *Delivery of the public education program by non-transient non-community water systems.* Non-transient non-community water systems must:

(1) Publicly post informational posters on lead in drinking water in a public place;

(2) Hold at least one public meeting annually to educate water consumer's about lead in drinking water and to answer questions on the subject; and

(3) Distribute brief informational pamphlets on lead in drinking water at least quarterly.

(f) *Evaluation of the public education program.* Community water systems serving more than 10,000 persons must, within 12 months after a public education program is undertaken, and every 24 months thereafter, evaluate the extent to which the program is effective. As part of the evaluation, the system must demonstrate to the State that, as a result of the public education program, users' knowledge about lead in drinking water enables them to alter voluntarily their water use patterns to reduce consumption of lead-contaminated water. The demonstration must be based on public survey (by mail, telephone, or in person) to evaluate the effectiveness of the public education program. Based on the results of this evaluation, the system must modify subsequent public education efforts, if such modification is determined by the State to be necessary to ensure the effectiveness of the public education program in reducing lead consumption.

§ 141.86 Analytic and monitoring requirements for lead and copper MCLs and treatment technique requirements.

(a) *Analytic provisions.* Only the analytic methods specified below, or methods otherwise approved by EPA, may be used to determine compliance with the MCLs for lead and copper specified in § 141.82(a) of this part and to determine whether a system meets the no-action levels specified in § 141.83(b)(1) of this part. Results must be reported in the units specified by the analytic method used. The following methods are incorporated by reference with the approval of the Director of the Federal Register under 5 U.S.C. 552(a):

- (1) Lead:
- (i) Method 239.2, Atomic Absorption Furnace Technique.

"Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio (EPA-600/4-79-020), March 1985. Available from ORD Publications, CERL, EPA, Cincinnati, Ohio 45268. (For analyzing lead and copper, the technique applicable to total metals must be used.) and;

- (ii) Method D3559-85D, Atomic Absorption Furnace Technique.
- Annual Book of ASTM Standards, Vol. II.01, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; and
- (iii) Method 3043Q, Atomic Absorption Furnace Technique.

"Standard Methods for the Examination of Water and Wastewater," 16th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1985.

- (2) Copper:
- (i) Method 220.2

"Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio (EPA-600/4-79-020), March 1985. Available from ORD Publications, CERL, EPA, Cincinnati, Ohio 45268. (For analyzing lead and copper, the technique applicable to total metals must be used.) and

- (ii) Method D1688-84F
- Annual Book of ASTM Standards, Vol. II.01, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; or
- (iii) Method 304, Atomic Absorption Furnace Technique;

"Standard Methods for the Examination of Water and Wastewater," 16th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1985; and

- (iv) Method 220.1, Atomic Absorption Direct Aspiration;

"Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio (EPA-600/4-79-020), March 1985. Available from ORD Publications, CERL, EPA, Cincinnati, Ohio 45268. (For analyzing lead and copper, the technique applicable to total metals must be used.); and

- (v) Method D-1687-84D or E, Atomic Absorption Direct Aspiration;
- Annual Book of ASTM Standards, Vol. II.01, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; and
- (vi) Method 303A or B, Atomic Absorption Direct Aspiration; "Standard Methods for the Examination of Water and Wastewater," 16th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1985; and

- (vii) Method 200.7A, Inductively-coupled plasma.

"Inductively-Coupled Plasma Atomic Emission Analysis of Drinking Water," Appendix to Method 200.7, September 1985, U.S. Cincinnati, Ohio 45268.

- (3) pH:

(i) Method 150.1, Electrometric.

"Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio (EPA-600/4-79-020), March 1985. Available from ORD Publications, CERL, EPA, Cincinnati, Ohio 45268.

- (ii) Method D1293-84A Electrometric.
- Annual Book of ASTM Standards, Vol. II.01, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; and
- (iii) Method 423, Electrometric.

"Standard Methods for the Examination of Water and Wastewater," 16th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1985.

Each analysis must be performed by a laboratory approved by EPA or the State except that analyses of pH must be conducted in the field by a technician approved by the State as specified in Part 136 of this title.

(4) Analyses under this section shall only be conducted by laboratories that have received approval by EPA or the State. To obtain approval, laboratories must:

- (i) Analyze performance evaluation samples which include lead and copper provided by the EPA Environmental Monitoring and Support Laboratory or equivalent samples provided by the State; and

(ii) Achieve quantitative acceptance limits as follows:

(A) Lead: ± 30 percent of the actual amount in the Performance Evaluation sample when the active amount is greater than 0.005 mg/l.

(B) Copper: ± 10 percent of the actual amount in the Performance Evaluation sample when the active amount is greater than 0.050 mg/l, and

(C) pH: ± 0.1 pH units of the actual pH when actual pH is in the range of 0-14 pH units;

(iii) Achieve method detection limits according to the procedures in Appendix B of Part 136 of this title as follows:

(A) Lead: 0.001 mg/l; or

(iv) Be currently approved by EPA or the State to perform analyses to the specifications described in paragraph (a)(5) of this section.

(5) States have the authority to allow the use of previously collected monitoring data for purposes of compliance monitoring, if the data were collected and analyzed in accordance with the requirements of this section.

(6) All lead levels measured between the PQL of 0.005 mg/l and the MDL of 0.001 mg/l must be averaged as reported. All levels below the MDL of 0.001 mg/l must be reported as zero and average as such. Lead levels reported below an MDL larger than 0.001 mg/l must be reported as the MDL and averaged as such.

(b) *Phased-in monitoring program.* Systems must begin monitoring to determine compliance with the MCLs specified in § 141.82(a) of this part, and to determine whether the no-action levels specified in § 141.83(b)(1) of this part are met, according to the following schedule:

System size (# of persons served)	Monitoring to begin no later than	Monitoring to conclude no later than
>3,300	[Enter date 3 months after publication of final rule]	[Enter date 15 months after publication of final rule]
500-3,300	[Enter date 15 months after publication of final rule]	[Enter date 27 months after publication of final rule]
>500	[Enter date 27 months after publication of final rule]	[Enter date 39 months after publication of final rule]

(c) *Monitoring provisions for lead and copper MCLs.* (1) Samples must be collected at every entry point to the water distribution system, except when multiple wells draw from a single aquifer and there is no treatment, in which case, the State may designate one or more representative wells for monitoring. When multiple samples are

required under this paragraph, states may allow up to 5 samples to be composited for analysis. If the lead or copper level in the composited sample exceeds one-fifth the lead or copper MCL specified in § 141.82 of this part, each of the entry points represented in the composite sample must be resampled individually for whichever contaminant exceeded one-fifth the MCL. This means that for lead, the laboratory must be able to measure levels down to 0.001 mg/l for compositing to be allowed. A composited sample that contains less than or equal to 0.001 mg/l of lead would be deemed in compliance with the MCL without sampling each well represented in the composited sample.

(2) Non-transient non-community water systems must sample water for lead and copper in at least one sample per entry point (except as specified in paragraph (c)(1) of this section) every five years. Non-transient non-community water systems are not eligible for reduced monitoring frequency.

(3) Community water systems must sample water for lead and copper in at least one sample per entry point as follows:

System size (persons served)	Minimum # Samples per Entry Point/Monitoring Period
>500	1/Year.
>500 using ground water	1/Year.
>500 using surface water or a combination of surface water and ground water.	1/Quarter.

(4) For community water systems, if no violation of the MCL has occurred within the most recent 2 years of monitoring, the State may reduce the monitoring frequency to no less than the following:

System size (persons served)	Minimum number samples/entry point/monitoring period
>500	1/year, every 5 years.
>500 using ground water..	1/year, every 5 years.
>500 using surface water or a combination of surface water and ground water.	1/quarter for 1year, every 5 years.

(5) If the result of an analysis performed under paragraph (c) of this section indicates that the level of copper or lead at any sampling point exceeds the MCL specified in § 141.82(a) of this part, the State may allow the system to obtain and analyze one additional

sample at the same sampling point within 2 weeks of the original sample.

(6) When the only analysis, or the average of the two analyses, as appropriate, made pursuant to paragraph (c)(5) of this section exceeds the MCL at any sampling point, the system is in violation of the MCL and must notify the State pursuant to § 141.31 of this part and give notice to the public pursuant to § 141.32 of this part. The system must perform increased monitoring at this sampling point at a frequency determined by the State until: (i) The MCL has not been exceeded in two successive monitoring periods of the increased monitoring program; or (ii) a monitoring schedule imposed as a condition of a variance, exemption, or enforcement action becomes effective.

(d) *Monitoring provisions for corrosion control treatment technique requirements for community water systems.*—(1) *Materials evaluation and identification of sampling group.* (i) By the applicable data specified in paragraph (b) of this section, each community water system must complete a materials evaluation in the community adequate to identify a group of residences from which samples required by this section must be taken. Systems are to select single-family houses, except that they may include apartments and other multiple-family housing where such housing constitutes more than 20 percent of the housing served by the community. This group of residences must be served by the ends of the distribution system and have plumbing systems that either contain lead solder that is less than 5 years old or have lead service connections or interior lead pipes. To the extent possible, the group of residences shall have an equal number of residences from each of these two categories. To identify these residences, systems must use the information collected by pursuant to § 141.42(d) of this part. As necessary, systems must also review the following:

(A) Plumbing codes, permits, and records in the files of the community building department that indicate the plumbing materials installed within residences;

(B) Inspections and records of the distribution system that indicate the material composition of the distribution lines, service lines, and connections;

(C) Existing water quality information, including results of prior analyses of water in the system or individual residences, indicating residences in which the lead level of the water may be of concern; and

(D) Design plans of the distribution system indicating residences that are served by the ends of the distribution system.

(ii) The number of residences in the sampling group must be no less than 50 percent greater than the number of sample points required for compliance with this section. If, based on the materials evaluation, a community water system cannot identify a sufficient number of residences with the specified characteristics, the system must demonstrate this to the State by:

(A) Submitting a report on the materials evaluation documenting that lead pipe was never used for service lines, goosenecks, pigtails, or interior plumbing pipes or that all such plumbing has been replaced, in those portions of the community that are served by the ends of the distribution system; and/or

(B) Demonstrating that the community has had in effect and successfully enforced for a minimum of five years a ban on lead solder use or that no lead solder was used in the construction of residences in those portions of the community served by the ends of the distribution system.

(iii) A system that meets either of the conditions in paragraph (d)(1)(ii) of this section must add to the sampling group, as appropriate, depending upon which of the conditions in paragraph (d)(1)(ii) of this section is met, residences located elsewhere within the distribution system that either:

(A) Are served by lead service connections; or

(B) Contain lead solder that is less than five years old. If the community water system still cannot establish a sampling group sufficiently large to meet the monitoring requirements of this section, the system must add to the sampling group the number of residences with lead solder served by the ends of the distribution system, irrespective of the lead content of the system and the age of lead solder in plumbing of the residences, that will increase the size of the sampling group sufficiently to meet the monitoring requirements of this section.

(iv) States may disapprove proposed monitoring plans. Systems with disapproved plans must revise the plans and obtain State approval before monitoring commences. A system with a disapproved monitoring plan is in violation of this section until the State approves a revised plan.

(2) *Sample collection.* Community water systems must obtain a one-liter sample of water from the cold-water kitchen tap of each residence monitored in the sampling group each monitoring period. In residences selected because

they have new lead solder, the system must collect a morning first draw sample. In residences selected because they have lead service connections, the system must collect a service connection sample. The service connection sample consists of a sample from:

(i) The tap after the morning first draw water changes temperature;

(ii) The tap after flushing the water in the household plumbing (calculated based on pipe diameter and length to the tap from the connection); or

(iii) Directly from the service line itself.

In residences with both new lead solder and a lead service connection, the system may take a morning first draw sample and a service connection sample and count it as two residences in its pool. Systems must take subsequent samples from the same residences that were sampled during the initial monitoring period, except that, to the extent this is not possible, systems may, with State concurrence, take a sample from another residence remaining in the sampling group with the same characteristics as the initial site. Systems collecting only one set of samples annually must collect all samples during the months of July, August, or September.

(3) *Frequency of monitoring.* By the applicable date specified in paragraph (b) of this section, each community water system must begin monitoring in accordance with paragraph (a) of this section to determine whether its water meets the no-action levels specified in § 141.83(b)(1) of this part. Community water systems must monitor the sampling group at the following minimum frequency:

System size (persons served)	Minimum number samples/monitoring period
> 100,000.....	50/Quarter.
10,001 to 100,000.....	30/Quarter.
3,301 to 10,000.....	20/Quarter.
500 to 3,300.....	10/Year, Every Other Year.
< 500.....	10/Year, Every Five Years.

(4) *Reduced frequency of monitoring.* If, throughout the most recent four quarters, a community water system serving more than 3,300 persons has met the no-action levels specified in § 141.83(b)(1) of this part or has not departed from the operating parameters specified by the State after implementation of a State-approved treatment plan under § 141.84 of this part, the State may reduce the monitoring frequency required by this

section to no less than the following minimum frequency:

System size (persons served)	Minimum number samples per monitoring period
> 100,000.....	50/Year.
10,001 to 100,000.....	30/Year.
3,301 to 10,000.....	20/Year.

(5) Systems monitoring once per year under this schedule must do so during the months of July, August, or September.

(e) *Monitoring provisions for corrosion control treatment technique requirements for non-transient non-community water systems.*—(1) *Identification of sampling group.* By the applicable date specified in paragraph (b) of this section, each nontransient non-community water system must identify all buildings served by the system. Such buildings will comprise the sampling group.

(2) *Sample collection.* Non-transient non-community water systems must obtain a one-liter morning first draw sample from the tap or a service connection sample (if the building has a lead service connection) in each building typically used to draw water for human consumption. The service connection samples may be drawn by any of the three methods specified in paragraph (d)(2) of this section. At least one sample must be taken from every building in the sampling group each monitoring period.

(3) *Frequency of monitoring.* By the applicable date specified in paragraph (b) of this section, each non-transient non-community water system must begin monitoring in accordance with paragraph (a) of this section to determine whether its water meets the no-action levels specified in § 141.83(b)(1) of this part. Non-transient non-community water systems must monitor the sampling group at least annually, during the months of July, August, or September.

(4) *Reduced frequency of monitoring.* Non-transient non-community water systems are not eligible for reduced monitoring frequency.

(f) Only samples collected in compliance with section 141.86(d)(1)(i) of this part can be used to determine whether no-action levels described in § 141.83 of this part have been met.

§ 141.87 Reporting and recordkeeping.

(a) All systems that serve more than 500 persons must report to the State the results of all monitoring required by this subpart within 10 days of the end of

each calendar quarter the system is in operation for any period of time. Systems that serve 500 or fewer persons must report such results to the State within 10 days of the end of each calendar year such system is in operation for any period of time. All systems must certify that the information submitted under this section is accurate. To the extent systems perform more monitoring in conformance with § 141.86(a) of this part than required under § 141.86 of this subpart, systems must include the results of the additional monitoring in their reports to the State.

(b) Reporting under this section must include the identification and location of sampling sites monitored under § 141.86(d) of this part and, the first time a site is sampled, the rationale for choosing the site.

(c) Systems operating under a State approved treatment plan to install or improve corrosion control must, according to a schedule established by the State in the treatment plan, report to the State the system's progress in completing the treatment plan's interim steps (see § 141.84(a)(2) of this part).

(d) Systems operating under an approved treatment plan containing a public education program must detail the system's progress in completing the public education program requirements in the reports submitted to the State under paragraph (c) of this section, this report must include. As specified in § 141.85(f) of this part, this report must include data to the State that indicate that, as a result of the public education program, the users' knowledge about lead in drinking water enables them to alter voluntarily their water use patterns to reduce consumption of lead-contaminated water.

(e) EPA may require a system to establish and maintain such records, reports, or information as the Administrator deems necessary to determine whether the system has acted or is acting in compliance with this subpart.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, and 300j-9.

2. Section 142.14 is amended by revising paragraphs (a)(1)(iii) and (d)(2), reserving paragraphs (d)(4), (5), and (6), adding paragraphs (d)(7), (d)(8), (d)(9), and (d)(10), to read as follows:

§ 142.14 Records kept by States.

(a) * * *

(1) * * *

(iii) The analytical results, set forth in a form that makes possible comparison with the limits specified in §§ 141.14, § 141.71, § 141.72, § 141.73, § 141.82, and no-actions levels in § 141.83 of this chapter.

* * * * *

(d) * * *

* * * * *

(2) Records of any State approvals, including approvals of treatment plans required by § 141.83 of this chapter, and the grounds for such approvals;

(3) * * *

(4) [Reserved]—(6)

(7) Records of any reductions in monitoring frequency authorized by § 141.86(c)(4) or § 141.86(d)(4) of this chapter, specifying the new frequency;

(8) Records of any requirements to perform increased monitoring, as required by § 141.86(c)(6) the frequency of such monitoring;

(9) Records of any determination under § 141.84 of this chapter that a system has minimized the corrosivity of its water, the evidence supporting this determination, and the final approved operating parameters.

(10) Records of a system's evaluation of its public education program, as required by § 141.85(f) of this chapter, and of any State determination that the system must modify subsequent public education efforts.

3. Section 142.15 is amended by reserving paragraphs (b) (3) and (4) and adding paragraphs (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), and (b)(11) to read as follows:

§ 142.15 Reports by States.

* * * * *

(b) * * *

* * * * *

(3)—(4) [Reserved.]

* * * * *

(5) A list, including system identification numbers, of systems that have been authorized to reduce their monitoring frequencies in accordance with § 141.86(c)(4) and/or § 141.86(d)(4) of this chapter and the new monitoring frequencies;

(6) a list, including system identification numbers, of systems that are required to perform increased monitoring under § 141.86(c)(6) of this chapter and the new monitoring frequency.

(7) A list, including system identification numbers, of systems that have demonstrated to the State that an insufficient number of residences were

available for sampling, as specified by § 141.86(d)(1) of this chapter;

(8) A list, including system identification numbers, of systems that exceed one or more no-action levels and the level(s) exceeded.

(9) A list, including the system identification numbers, of systems serving 3,300 or more persons that have received State approval for their treatment plans, as specified in § 141.84 of this chapter and a list, including system identification numbers, of the system serving fewer than 3,300 persons which have received treatment plans from the State, or have received State approval for treatment plans submitted by the system;

(10) A list, including system identification numbers, of systems that have demonstrated that they have minimized the corrosivity of their water as required by § 141.84 of this chapter. The report must also contain for each system the new operating parameters with which the system must comply.

(11) A report of the results of the evaluations of public education programs required by § 141.85(f) of this chapter and of any State determination that the system must modify subsequent public education efforts.

4. Section 142.17 is added to read as follows:

§ 142.17 Special primacy requirements.

(a)—(b) [Reserved.]

(c) *Special primacy requirements for States to adopt 40 CFR Part 141, Subpart I, Control of Lead and Copper.* An application for approval of a State program revision that adopts 40 CFR Part 141, Subpart I, Control of Lead and Copper, must contain:

(1) The text of the State statute or regulations containing the procedures or criteria for determining increased monitoring frequency (in accordance with § 141.86(c)(4) and/or § 141.86(d)(4) of this chapter) including a procedure for notifying the system of the new monitoring requirements.

(2) The text of the State statute or regulations requiring community water systems to conduct a materials evaluation and specifying the procedures for demonstrating to the State that sufficient residence with the required characteristics are not available (in accordance with § 141.86(d)(1) of this chapter). The regulations shall include the criteria the State will use to evaluate the community water system's demonstration. Such criteria must be the same or more stringent than those specified in § 141.86(d)(1) of this chapter.

(3) The text of the State statute or regulations specifying enforceable design and operating criteria for treatment techniques designed to control the corrosivity of water. These techniques include pH adjustment, alkalinity adjustment, and the addition of corrosion inhibitors. In addition, the regulations must contain a procedure (e.g., a permit or certification system) to ensure that the design and operating criteria are met on a continuous basis.

(4) The text of the State statute or regulations specifying the procedures and criteria the State will use to evaluate and approve a treatment plan submitted for approval by systems serving more than 3,300 persons (in accordance with § 141.84 of this chapter); the criteria the State will use to determine that corrosivity has been minimized (including the data the system must submit to show that water corrosivity has been minimized) and select approved operating parameters and a method for informing the system of its approved operating parameters.

(5) Text of the State statute or regulations specifying procedures and criteria the State will use to issue or approve treatment plans for systems serving 3,300 or fewer persons, including procedures the system must follow to request a plan, the criteria the state will use to determine that corrosivity has been minimized, and the procedures the State will use to inform the system of its new operating parameters.

(6) Procedures and criteria the State will use in evaluating the data submitted by the system on the effectiveness of its public education program and in determining if the system must modify subsequent public education efforts.

5. A new § 142.63 is added to read as follows:

§ 142.63 Variances from the maximum contaminant levels for lead and copper.

(a) The Administrator, pursuant to section 1415(a)(1)(A) of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for lead and copper: Coagulation/filtration; ion exchange; lime softening; reverse osmosis.

(b) A state shall require community water systems and non-transient, non-

community water systems (hereinafter referred to as "systems") to install and/or use any treatment method identified in paragraph (a) of this section as a condition for granting a variance. If, after the system's installation of the treatment method, the system cannot meet the requirements of § 141.82(a) of this chapter, that system shall not be eligible for a variance under the provisions of section 1415(a)(1)(A) of the Act unless the system demonstrates to the State that lead levels or copper levels, as appropriate, would not pose an unreasonable risk to health.

(c) The State may require a system to provide bottled water or point-of-use devices or other means as a condition of granting a variance from the requirements of § 141.82(a) of this chapter to avoid an unreasonable risk to health.

(d) Systems that use bottled water as a condition of receiving a variance from the requirements of § 141.82(a) of this chapter must meet the requirements in either paragraph (d)(1) or (d)(2) of this section in addition to the requirements in paragraph (d)(3) of this section:

(1) The State must require and approve a monitoring program for bottled water. The system must develop and implement a monitoring program that provides reasonable assurances that the bottled water meets all MCLs. The system must analyze a representative sample of the bottled water for all contaminants for which MCLs are promulgated under Part 141 of this chapter during the first quarter it supplies the bottled water to the public and annually thereafter. The system must provide results of the monitoring program to the State annually.

(2) The system must receive a certification from the provider of bottled water that the bottled water supplied has been taken from an "approved source" as defined in 21 CFR 129.3(a); the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g)(1) through (3); and the bottled water does not exceed any MCLs or quality limits as set out in 21 CFR 103.35, 110, and 129. The system shall provide the certification to the State the first quarter after it supplies bottled water and annually thereafter.

(3) The system is fully responsible for the provision of sufficient quantities of bottled water, for consumption but not washing purposes, to every customer of the system via door-to-door bottled water delivery.

(e) Systems that use point-of-use devices as a condition for obtaining a variance from the MCLs for lead or copper must meet the following requirements:

(1) It is the responsibility of the system to operate and maintain the point-of-use treatment device.

(2) The system must develop a monitoring plan and obtain State approval for the plan before point-of-use devices are installed for compliance. This monitoring plan must provide health protection at least equivalent to a monitoring plan for central water treatment.

(3) The system must properly apply effective technology under a plan approved by the State and must maintain the microbiological safety of the water.

(4) The system must meet all State requirements regarding adequate certification of performance, field testing, and, if not included in the certification process, a rigorous engineering design review of the point-of-use devices.

(5) The design and application of the point-of-use devices must consider the tendency for increases in heterotrophic bacteria concentrations in water treated with activated carbon. It may be necessary to use frequent backwashing, post-contact disinfection, and heterotrophic plate count monitoring to ensure that the microbiological safety of the water is not compromised. The system must obtain any necessary right-of-entry to enable the State and EPA to inspect point-of-use devices.

(6) The system must protect all users. Every building connected to the system must have a point-of-use device installed, maintained, and adequately monitored. The system must subject every building to treatment and monitoring, and must ensure that the rights and responsibilities of the system customer convey with title upon sale of property.

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FRIDAY

Thursday
August 18, 1988

Part VI

Department of Education

34 CFR Part 74 et al.

Education Department General
Administrative Regulations; Notice of
Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 74, 75, 76, 77, 237, 263, 300, 356, 562, 630, 653, and 762

Education Department General Administrative Regulations

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Education Department General Administration Regulations (EDGAR) to reduce burden by deleting unnecessary requirements and provisions; remove sections already contained in other Department of Education (Department) regulations; update financial reporting requirements and payment methods to comply with the Treasury Department's mandate to eliminate the Federal Reserve Bank letter-of-credit and reduce dependence on paper checks; and include provisions for the award and administration of cooperative agreements under 31 U.S.C. Chapter 63. The Secretary also proposes to add regulations making financial aid recipients who are not current in the repayment of debts owed to the Federal government ineligible for discretionary grants and other forms of assistance from the Department of Education.

Certain EDGAR provisions relating to preapplications would be transferred to the program regulations for the only program which currently uses preapplications; other EDGAR provisions, relating to State complaint procedures, would be transferred to the program regulations of the program from which they were derived originally. Assistance to States for Education of Handicapped Children.

Finally, the cost principles in Part 74 would be amended in order to ensure the Department's conformity with the requirements of the revised Office of Management and Budget (OMB) Circulars A-21 and A-110.

DATES: Comments must be received on or before November 16, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mary Hughes, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3122, Regional Office Building No. 3), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mary Hughes. Telephone: (202) 732-7400.

SUPPLEMENTARY INFORMATION: In a continuing effort to improve the administration of Department programs and service to the public, and in order to reduce regulatory burden, the Secretary has identified certain provisions of EDGAR that should be revised or removed. These provisions are in addition to those published as final regulations in the *Federal Register* of July 24, 1987 (52 FR 27801).

As with the earlier publication, the Secretary has identified opportunities to remove sections that are obsolete or not required by law. In addition, the Secretary proposes amendments to reflect the most efficient and cost-effective method of making payments to grantees, in accordance with Treasury Circular 1075 (31 CFR Part 205) and the Treasury Department mandate to replace letter of credit and Treasury check payments with more efficient electronic funds transfers. The Secretary also proposes to make changes in the financial reporting requirements to reduce burden on grantees.

Finally, the Secretary, recognizing the increase in the number of cooperative agreements used by the Department and consistent with the rulemaking requirements of the General Education Provisions Act (GEPA) section 431, proposes to revise sections of EDGAR to establish requirements for the award and use of cooperative agreements under 31 U.S.C. Chapter 63.

The Secretary is open to further suggestions for the deregulation of EDGAR and is particularly interested in public comment on the award and administration of cooperative agreements.

The specific parts and sections proposed for revision are as follows:

Section 74.3—The Secretary proposes to continue using general grant-making procedures to enter into cooperative agreements rather than establish an entirely new selection process for cooperative agreements. The Secretary proposes to amend the definition of "grant" in § 74.3 to include, specifically, cooperative agreements rather than relying on the fact that the current definition of "grant" covers all types of assistance relationships. However, the Secretary believes that some additional procedures are necessary for the administration of cooperative agreements. Therefore, the Secretary proposes to add requirements for cooperative agreements in appropriate places throughout the regulations.

Section 74.47—The Secretary proposes to amend this section to reflect the codification of the Intergovernmental Cooperation Act of 1968 into Title 31 of the U.S. Code, Chapter 65, and to reflect amendments to OMB Circular A-110 regarding income on advances made to grantees. Under the amendments to the Circular a grantee, other than a State as defined in 31 U.S.C. 6501, is required to hold advances in an interest-bearing account. Any interest over \$100 per year must be paid to the Department. The exception in § 74.47(b) regarding interest earned by States does not apply to programs subject to section 487 of the Higher Education Act of 1965, as amended (20 U.S.C. 1094).

Sections 74.73, 74.74, 74.75, 74.76, 74.91, 74.93 and 74.96—The Secretary proposes to revise these sections to reflect current procedures for financial reporting and to describe the most efficient and cost-effective method of making payments to grantees, in accordance with Treasury Circular 1075 (31 CFR Part 205) and other guidance provided by the Treasury Department. For example, the amendment to § 74.91 would change the definition of "advance by Treasury check" to "advance" to reflect the Secretary's discretion to make advances through other methods authorized by the Treasury Circular. The current regulations do not fully describe the kind of payment methods the Secretary may use to implement the requirements of the Treasury Circular.

Section 74.94—The Secretary proposes to remove this section because it is redundant with § 74.93 as revised. Proposed § 74.93 would now cover payment methods for both construction and non-construction grants.

Section 74.172—The Secretary proposes to revise this section because it is outdated. Currently, educational institutions follow the cost principles found in EDGAR, Part 74, Appendix D; these cost principles implement OMB Circular A-21, Cost Principles for Educational Institutions. However, in 1979 and again in 1982, OMB revised Circular A-21. The Department has not yet implemented these changes in EDGAR. Additionally, OMB revised Circular A-21 on June 9, 1986, at 51 FR 20908, and on December 2, 1986, at 51 FR 43487, to establish a fixed overhead allowance for the administration of federally sponsored grants and contracts at educational institutions. The fixed allowance will equal 3.6 percent of modified total direct costs, and no faculty reporting will be required to support the allowance. These regulations amend EDGAR by revising

Appendix D of Part 74 to include the current provisions of OMB Circular A-21. These changes will permit the Department to ensure consistency with the government-wide requirements of Circular A-21.

Section 74.174—In recent years Congress has passed laws that make for-profit organizations eligible for grants under some programs administered by the Secretary. The Department has no regulations that specify what cost principles apply to these organizations when they receive grants. Therefore, the Secretary proposes to apply the cost principles for commercial organizations when the Secretary makes a grant to a for-profit organization. These principles already apply, under the Federal Acquisition Regulations, to for-profit organizations that enter into contracts with the Federal government (48 CFR Part 31). The underlying principle that the Federal government should pay only for costs to assist a grant activity is not changed simply because for-profit organizations are made eligible. Thus, to ensure that the Department does not pay for costs that inure to the owners of a for-profit grantee, the proposed regulations would provide that no fee or other element above actual costs may be paid to a for-profit organization that receives a grant from the Department.

Section 74.175—The Secretary proposes to revise this section to update references that are obsolete due to legislative and regulatory changes.

Sections 75.3 and 76.3—The Education Department General Administrative Regulations in 34 CFR Part 74 are referenced in each set of applicable program regulations. Thus, it is unnecessary to include the reference again in Parts 75 and 76 of EDGAR. Therefore, the Secretary proposes to remove these two sections.

Section 75.4—The Secretary proposes to revise this section by updating the cross-reference to the regulations for contracts that will appear in Title 48 of the Code of Federal Regulations.

Sections 75.60 through 75.62—Consistent with the requirements of OMB Circular A-129, Managing Federal Credit Programs, dated May 9, 1985, the Secretary proposes to add regulations making persons who are not current in repaying debts owed to the Federal government ineligible to receive a fellowship, scholarship, or discretionary grant from the Department. In order to demonstrate the concern of the Secretary regarding the need for individuals to meet their responsibilities under the programs of this Department, § 75.60 lists the current ED programs under which an individual might owe a

debt to the Department. The Department already has provisions in the regulations implementing the student financial assistance provisions of Title IV of the Higher Education Act of 1965 (Title IV), as amended, that prohibit a student whose account under certain Title IV programs is not current from receiving further financial assistance from the Department. While these procedures do not fully implement Circular A-129, they do reach a substantial portion of the debt owed to the Department. The requirement for eligibility proposed in § 75.60 would increase the Department's ability to ensure that individuals repay debts incurred under those Title IV programs and the other programs listed in that section. The Secretary believes that an essential condition for an individual receiving a fellowship, scholarship, or discretionary grant is that the individual keep his or her account current as required under prior loan or grant conditions.

This Department and twenty-six other agencies have published final and interim final Nonprocurement Debarment and Suspension regulations. These regulations permit debarment of an individual or organization that failed to pay a single substantial debt, or a number of outstanding debts, owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted. Thus, the Department does not intend to make awards to individuals debarred or suspended under Debarment and Suspension regulations.

Section 75.61 requires an applicant for a fellowship, scholarship, or direct grant to certify that he or she is eligible under § 75.60, and not debarred or suspended under regulations established under Executive Order 12549. The fact that an award is made to an individual who has provided a certification required by § 75.61 does not mean that the Secretary has concluded that the individual is eligible under § 75.60. If an individual is not current in repaying debts owed to this Department or any other Federal agency, or has been debarred or suspended by this Department or any other Federal agency, and fails to certify to those facts, the Secretary may proceed with a civil action to recover the funds made available and may take other legal actions against the individual.

The Secretary directly administers a number of fellowship and scholarship programs and a few programs where discretionary grants may be made to individuals. However, not all fellowship and scholarship programs are administered directly by the Secretary.

In some cases an institution of higher education may make fellowships. Under other programs, a State or State educational Agency may make awards after receiving funds on a formula or other basis. Sometimes the Secretary awards a grant to the institution or organization making the awards; in other cases, the Secretary enters into an agreement with the institution or organization. Whatever the nature of the programs involving an institution of higher education, State educational agency, or other intermediate entity, § 75.62 is intended to apply to the entity, imposing minimal requirements to ensure that a fellowship or scholarship is not provided to an individual who fails to keep his or her prior commitments. Section 75.62 requires that an entity to which the section applies obtain a certification from each individual who applies for a fellowship or scholarship. The certification, made under penalty of perjury, would state that the individual is eligible under § 75.60, and not debarred or suspended under regulations established under Executive Order 12549. If an applicant failed to provide the certification or the entity is informed by the Secretary that the applicant is ineligible, the entity would be prohibited from giving the applicant a fellowship or scholarship. Section 75.62 also permits the Secretary to require that an entity subject to § 75.62 submit a list of proposed or actual fellowship or scholarship recipients to the Secretary so the Secretary may verify the eligibility of these individuals. If the Secretary determines that an individual has provided a false certification, the Secretary may take appropriate legal action, including recovery of any funds made available to the individual.

The Secretary is interested in receiving comments on whether the Secretary should also apply the § 75.60 eligibility provisions to programs where the Secretary or an intermediate entity provides stipends to individuals.

Finally, as a technical matter, the Secretary intends to have these regulations apply to all fellowship and scholarship programs of the Department. However, some of the fellowship and scholarship programs do not apply Part 75 to the program. Therefore, the Secretary is proposing in this document to amend the program regulations of those programs that do not apply Part 75 to include a direct reference to these proposed new sections. The program regulations that are being amended for this purpose are the Christa McAuliffe Fellowship Program (Part 237), the Indian Fellowship Program (Part 263),

Handicapped Research: Research Fellowships (Part 356), Bilingual Education: Fellowship Program (Part 562), the Paul Douglas Teacher Scholarship Program (Part 653), and the Office of Educational Research and Improvement Fellows Program (Part 762).

Section 75.105(c)—The Secretary proposes to revise this section by adding language to paragraph (c)(3) that clarifies how the competitive process works when the Secretary announces absolute preference priorities.

Sections 75.107, 75.108, 75.110, 75.111, 75.113, 75.114, 75.115, 75.116, and the note following § 75.118—The Secretary proposes to remove these sections as burdensome and unnecessary. Section 75.110 is proposed for removal because it duplicates provisions in standard forms required by OMB. Sections 75.111 and 75.113–75.116 are proposed for removal because they require applicants under direct formula grant programs to provide information not essential to determine funding under a formula grant program. OMB circulars and regulations of OMB under the Paperwork Reduction Act of 1980 limit a Federal agency to collecting only that information which has practical utility to the agency in carrying out one of its functions or which is required by law. See 5 CFR 1320.4 (b) and (c). Sections 75.107 and 75.108 are proposed for removal as technical conforming amendments. The note following § 75.118 is proposed for removal because it contains a list of sections which are outdated.

Sections 75.130 through 75.134—The Secretary proposes to remove these sections, which cover how the Secretary treats preapplications, and to place them in the program regulations of the program to which they now apply—the Fund for the Improvement of Postsecondary Education (FIPSE).

Sections 75.150 through 75.154—The Secretary proposes to remove these sections as unnecessary because, at this time, there is no Department program that contains a requirement that a State must approve applications submitted to the program.

Section 75.155—Under Executive Order 12372, the Department has established regulations in Part 79 that allow States to comment on Department programs and activities. Sections 75.156–75.158, which pre-date the Executive Order, also provided a procedure for States to comment on Department programs. The procedure was designed for use by Department programs that required State input either by statute or by regulation. The Secretary proposes to revise § 75.155 to limit the applicability of §§ 75.156–75.158 to those programs

that require State input by statute, and to add a cross-reference regarding 34 CFR Part 79.

Section 75.160—The Secretary proposes to remove this section as a conforming amendment to the removal of §§ 75.151 and 75.153.

Section 75.200—The Federal Grant and Cooperative Act, now codified in Title 31 of the U.S. Code, sections 6301–6309, authorizes the use of cooperative agreements. At the time EDGAR was written, cooperative agreements were not widely used by the Department, but since then the number of program requests for using this award instrument has increased significantly. The proposed change to § 75.200 implements the standards in the Act and OMB guidance, 43 FR 36860, August 18, 1978.

Under the revised § 75.200, the Secretary may decide to use a cooperative agreement if the Department will be substantially involved in the administration of a particular assistance project. The key factor is whether the Secretary can expect agency collaboration or participation in the management of the project.

Section 75.216—The Secretary proposes to revise this section so the Department no longer must return applications that are not evaluated under § 75.217 or § 75.219. The change will reduce the cost to the Department of managing grant competitions. The provision in paragraph (b) of this section, under which the Secretary informs an applicant that its application has not been evaluated, is proposed for consolidation with § 75.218 which provides for notice to unfunded applicants.

Section 75.218—The Secretary proposes to change the requirement in this section that the Department explain reasons why an applicant was not selected after evaluation of its application. The Secretary currently sends a general letter if an applicant is not selected and provides a detailed letter upon the request of the applicant. The Secretary will continue to provide detailed information to applicants upon their request for that information. This policy would also apply to applications that are not evaluated under § 75.216.

Section 75.233—This section describes the factors the Secretary uses to set the amount of a grant. The Secretary proposes to make a technical revision to this section by clarifying that the Federal share of allowable costs is subject to any applicable matching or cost-sharing requirements.

Section 75.234—The Secretary proposes to revise this section, which describes conditions for making a grant,

to include conditions required for a high risk grantee, or the explicit nature of Federal involvement in a cooperative agreement.

Section 75.235—The Secretary proposes to revise paragraph (b) of this section to clarify that the Secretary includes in an award document any conditions as necessary under specific program authority or to implement high risk or cooperative agreement requirements.

Section 75.253—The Secretary proposes to clarify and strengthen the criteria for making continuation awards for multi-year projects. The current regulations, among other criteria, require the Secretary to be "satisfied that the grantee will satisfactorily complete the budget period that is about to end." The Secretary strongly believes that recipients of Federal grants should be accountable for making effective use of the funds they receive, just as local school districts should be accountable for the effectiveness of the education they provide. The proposed regulations would require that a grantee either (1) be making substantial progress toward meeting the objectives of its project, or (2) have obtained approval of changes in its project, at no additional cost to the Federal Government, that enable the grantee to meet those objectives in succeeding budget periods. Whether to approve any such proposed changes would be at the discretion of the Secretary. This revised provision should ensure that projects continued in subsequent budget periods will be successful in meeting the goals of the affected Federal programs.

Sections 75.253 and 75.261—The Secretary proposes to revise these sections to describe more fully the situations in which the Secretary has discretion to extend budget periods and project periods. Under § 75.703, a grantee may only obligate funds during the grant period. That period includes one or more approved budget periods within an authorized project period. However, if a grantee fails to receive a continuation award, the grant period ends with the last funded budget period. Thus, the grantee, in many cases, will not have obligated funds during that last budget period to prepare a final evaluation of the grant or to prepare closeout reports. The amendment to § 75.253 would permit the grantee to obligate funds for these purposes during an extension of the last budget period.

This section is also amended to clarify the procedures the Secretary uses to make a continuation award. Section 75.261 is proposed for amendment to make clear the Secretary's discretion to

extend project periods in cases where the need for the extension is not predicated on facts pertinent solely to an individual grantee. For example, Congress may not authorize funds for a particular program until sometime after the start of the fiscal year. In such a case, a group of grantees might have to delay the start of a project or cease operations temporarily, delaying the expected completion date for the grants. In this case, the Secretary may decide to extend the project periods of these projects without receiving an individual request from each grantee.

Section 75.262—This section is added to specify the Secretary's authority to convert a grant to a cooperative agreement, or to convert a cooperative agreement to a grant, after considering the necessity to do so. The decision to make a change in the type of award would be made after considering the factors in proposed § 75.200(b) (4) and (5). This assessment would dictate the type of award necessary to complete the project.

Section 75.510—The Secretary proposes to remove this section, governing the use of project directors, to reduce the intrusion of Federal regulations in day-to-day management of the Department's grants. Given the fact that, in general, discretionary grant programs base selection of a grantee, in part, on the quality of key personnel and that any change in key personnel must be approved by ED, the Department has sufficient assurances that the concerns addressed in this section are adequately met.

Section 75.518—This section is a general reference to Federal laws that may establish the minimum wage. The Secretary proposes to remove this section because it is merely informative and has no substantive effect.

Section 75.560(a)—The Secretary proposes to revise this section to update references that are obsolete. Paragraph (a) of this section is revised to refer to the cost principles in Parts 74 and 80 which describe the differences between direct costs and indirect costs, and which include principles for determining the general indirect cost rate that a grantee may use for grants under most programs.

Section 75.563 and 76.563—These sections currently provide illustrative lists of programs that have a statutory requirement not to use Federal funds to supplant non-Federal funds. The Secretary has found that these lists have not been helpful in informing potential recipients about these statutory requirements. Therefore, the Secretary proposes to remove the lists and will inform recipients under direct grant

programs through the grant approval process, including the specification of restricted indirect cost rates in approved budgets. The Secretary will inform recipients under State-administered programs through approved State plans.

Sections 75.580, 75.581, 76.580, and 76.581—The Secretary proposes to remove these sections in their entirety. Paragraphs (b) and (c) of §§ 75.580 and 76.580 were based on statutory requirements that are not obsolete. Furthermore, coordination with other activities in the same geographic area served by the project is not necessary in all types of programs and, therefore, should not be a general requirement in EDGAR.

Section 75.590—The Secretary proposes to remove the examples of persons being served by the project given in paragraph (c) of the current regulations. The grantee continues to be responsible for evaluating the effect of the project on all participants.

Section 75.608—The Secretary proposes to change the word "shall" to "may" to permit a grantee discretion in the use of its facilities.

Section 75.616—The Secretary proposes to revise the current standards for energy efficiency to incorporate the most recent standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers. This incorporation by reference was approved by the Director of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a).

Section 75.617—The Secretary proposes to add a section to implement his regulatory authority as required under the Coastal Barriers Resource Act.

Section 75.622—The Secretary proposes to make a technical correction.

Section 75.625—The cross-reference preceding this section refers to regulations that specify the Department's policy on inventions and patents. The content of § 75.625, which is also a cross-reference, would be incorporated into the existing cross-reference, and § 75.625 would be removed.

Section 75.626—Paragraph (b) of this section contains a reference to regulations that no longer exist. The Secretary proposes to remove paragraph (b) of this section to be consistent with OMB Circular A-124, Patents—Small Business Firms and Nonprofit Organizations. The Department no longer has an interest, as a general matter, in retaining rights to inventions and patents of grantees of the Department. In specific cases where the Department needs to protect its rights to

inventions and patents, it may do so in the grant award document.

Sections 75.681 and 76.681—The Secretary proposes to remove the cross-reference following these sections. The cross-reference refers to regulations of the Department of Health and Human Services regarding the protection of human research subjects. These regulations do not apply to Department of Education programs except as specifically provided in appropriate program regulations. Also, there is currently underway an initiative to establish government-wide regulatory guidelines regarding the protection of human research subjects. The Department will promulgate appropriate regulations after the general government-wide policy is established. See 51 FR 20204, June 1986.

Sections 75.684 and 76.684—These sections on day-care services were originally included in EDGAR as requirements of the former Department of Health, Education, and Welfare. However, the sections were used primarily to impose requirements in welfare programs where funds were used specifically to establish day care centers. The Secretary proposes to remove these sections because they are not needed under the types of programs funded by the Department.

Sections 75.690 and 76.690—These requirements regarding the inclusion of educational components on energy conservation awareness are not required by E.O. 12185. The Secretary proposes to remove these sections as a part of the Administration's regulatory burden-reduction effort. However, a grantee remains free to include these components, as appropriate, if desired under the grantee's own policies.

Sections 75.707(h) and 76.707(h)—The Secretary proposed to update these sections to refer to the sections in 34 CFR Part 74 that impose the appropriate cost principles on grantees of the Department. The Secretary also notes his intention to address, in a future rulemaking document, issues regarding the accountability of funds under section 437 of GEPA as those issues relate to this section and certain other sections of EDGAR.

Sections 75.720 and 76.720—The Secretary proposes to limit the applicability of these sections to the financial status report required under § 74.73 and performance reports required under Subpart J of Part 74. Under §§ 75.720 and 76.720, as they currently stand, the Secretary may only request financial and performance reports on an annual basis. Prior to 1980, when EDGAR became effective, the

Department exercised discretion to require both performance and financial reports on a quarterly basis. At the time EDGAR was drafted, a general policy decision was made to limit performance reports and certain financial reports (such as the financial status report) to an annual reporting cycle. However, there was no intent to limit collection of the Federal Cash Transactions Report to an annual basis. For more than a decade, this report has been collected by this Department and its predecessor agencies on a quarterly, or more frequent, basis in order to prevent excessive drawdowns by grantees. In order to clarify the Department's authority to collect these reports when necessary, the Secretary proposes to limit the applicability of §§ 75.720 and 76.720 to the financial status reports and performance reports.

Sections 75.740 and 76.740—The Secretary proposes to amend these sections to include references to the regulations protecting student rights in research, experimental programs, and testing. The requirements referenced in these sections are codified at 34 CFR Part 98 and 99.

Sections 75.750 through 75.755—The Secretary proposes to remove these sections because the Paperwork Reduction Act of 1980 changed the nature of review under the paperwork control requirements in section 400A of the GEPA. As a result, this Department currently screens documents under OMB regulations at 5 CFR Part 1320 before final review and approval by OMB.

Section 76.102—This section of EDGAR lists those documents to which the provisions governing State plans in Part 76 of EDGAR apply. Since the list in § 76.1, which contains the programs and their statutory authorities to which Part 76 applies, has been removed (52 FR 27801, July 24, 1987), the Secretary proposes to revise § 76.102 by removing the cross-reference to § 76.1 at the end of the section and, as an aid to readers, by adding a reference to the statutory authority for each covered program. The Secretary also proposes to remove obsolete programs from the list and to add new programs to the list.

Section 76.125—The table following this section is outdated. The Secretary proposes to revise and update the table to reflect the programs administered by the Department that the Secretary has determined are eligible for inclusion in the consolidated grant application process. Programs that are not presently funded are not included in this list.

Sections 76.300 and 76.305—The Secretary proposes to remove § 76.305 because it restricts the discretion of the States to establish simpler procedures

for amending a subgrant than were required for the approval of the subgrant. Section 76.300 is revised to reflect this greater discretion.

Section 76.401—The Secretary proposes to revise this section to reflect more accurately the programs under which a State agency hearing is required before disapproval of an application.

Section 76.560—The Secretary proposes to make technical corrections.

Section 76.591—The Secretary proposes to make a technical correction.

Sections 76.770 and 76.771—These sections currently contain detailed instructions to the States on how to administer the programs subject to Part 76, particularly with respect to subgrantees under those programs. The Secretary proposes to simplify and consolidate these sections into a revised § 76.770, which would provide that a State must have procedures, for the administration of these programs, that are designed to ensure compliance with applicable statutes and regulations. It is not expected that the requirement being retained would impose any significant burden, since the States should already have these procedures in place for administering the programs involved.

Section 76.772—This section applies to the programs under Title IV of the Elementary and Secondary Education Act. The Title IV authority has been repealed. Therefore, the Secretary proposes to remove this section.

Sections 76.780–76.782—The Secretary proposes to remove these sections because they either do not apply to or have not been used under most programs of the Department. Most of these provisions were derived from the regulations for the State-administered program under Part B of the Education of the Handicapped Act (EHA). Those provisions of the State complaint procedure that were derived from the regulations under the EHA are proposed for transfer back to that program, which has shown the greatest need for the complaint procedure.

This action is not intended to implement the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–297. The conference report for that legislation states Congress' intent that the Department apply the EDGAR complaint procedures to the Chapter 1 program under Title I of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 100–297. The regulations for the Chapter 1 program are being developed at this time and will separately address the issue concerning inclusion of complaint procedures for that program.

Part 77—The Secretary proposes to amend the definitions Part of EDGAR to include cooperative agreements within the definition of "award."

Part 300—The Secretary proposes to amend the EHA Part B regulations to include the State complaint procedures that are proposed for removal from EDGAR.

Part 630—The Secretary proposes to revise Part 630 to include modified provisions from the current § 75.130–§ 75.134 regarding preapplications. The Fund for the Improvement of Postsecondary Education is the only Department program that uses these preapplication procedures.

Executive Order 12291

The proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. None of the proposed changes will place undue burden on small entities submitting applications. Many of the proposed changes are technical and will remove obsolete material from the regulations. Some of the proposed changes will reduce burden imposed by existing regulations. These changes, while not economically significant for individual entities, will be beneficial for all applicants.

Paperwork Reduction Act of 1980

Sections 74.73, 74.74, 75.261, and 75.720 contain information collection requirements. The Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget for its review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection during

and after the comment period in Room 3122, Regional Office Building No. 3, Seventh and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burden found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 74

Administrative practice and procedure, Education Department, Grant programs—education, Grants administration.

34 CFR Part 75

Education Department, Grant programs—education, Grants administration.

34 CFR Part 76

Education Department, Grant programs—education, Grants administration, Intergovernmental relations, State-administered programs.

34 CFR Part 77

Definitions.

34 CFR Part 237

Colleges and universities, Education, Elementary and secondary education, Scholarships and fellowships, Teachers.

34 CFR Part 263

Business and industry, Colleges and universities, Education, Engineers, Health professions, Indians—education, Law, Medical and dental schools, Natural resources, Scholarships and fellowships, Teachers.

34 CFR Part 300

Administrative practice and procedure, Education, Education of handicapped, Equal educational opportunity, Grant programs—education, Privacy, Private schools.

34 CFR Part 356

Education, Educational research, Fellowships.

34 CFR Part 562

Bilingual education, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

34 CFR Part 630

Colleges and universities, Education, Government contracts, Grant programs—education, Reports and recordkeeping requirements.

34 CFR Part 653

Education, Grant programs, State-administered, Student aid.

34 CFR Part 762

Education, Educational research, Fellowships, Teachers.

(Catalog of Federal Domestic Assistance number does not apply.)

Dated: July 21, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Parts 74, 75, 76, 77, 237, 263, 300, 356, 562, 630, 653, and 762 of Title 34 of the Code of Federal Regulations as follows:

PART 74—ADMINISTRATION OF GRANTS

1. The authority citation for Part 75 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110, unless otherwise noted.

2. An authority citation is added following each section of Part 74 that does not already have such an authority citation, to read as follows:

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110)

3. Section 74.3 is amended by revising the definition of "grant" to read as follows:

§ 74.3 Definitions.

* * * * *

"Grant" means an award of financial assistance in the form of money, or property in lieu of money, by the Federal government to an eligible recipient. The term includes a cooperative agreement except where otherwise provided by regulation. The term does not include any Federal procurement subject to the Federal Acquisition Regulation in 48 CFR, nor does it include technical assistance, which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations.

Also, the term does not include assistance, such as a fellowship or other lump sum award, for which the recipient is not required to account on an actual cost basis.

* * * * *

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110)

4. Section 74.47 is revised to read as follows:

§ 74.47 Interest earned on advances of grant funds.

(a) Unless exempted by Federal statute (see paragraph (b) of this section for the principal exemption)—

(1) Recipients shall maintain advances of Federal funds in interest-bearing accounts;

(2) Interest earned on Federal advances deposited in those accounts must be remitted promptly, but at least quarterly, to the Department; and

(3) A recipient may retain interest income up to \$100 per year to assist in the recoupment of administrative expenses.

(b) In accordance with 31 U.S.C. 6503, States are not accountable to the Federal government for interest earned by the State itself, or by its subgrantees, if this income is earned on an advance of funds made under a Department grant.

(c) Recipients are subject to the provisions in § 74.61(e) for minimizing the time between the transfer of advances and their disbursement. Those provisions apply even if there is no accountability to the Federal government for interest or other investment income earned on the advances.

(d) The following definitions apply to this section:

(1) "Interest" includes any interest or investment income earned by grantees, subgrantees, and cost-type contractors on advances of Department grant funds to the grantee.

(2) "State" includes any agency or instrumentality of a State but does not include any local government in a State.

(3) Notwithstanding the definition of "grant" in § 74.3, the word "grant" has the meaning given in 31 U.S.C. 6501.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, 31 U.S.C. Chapter 65, OMB Circular A-110)

5. In § 74.73, paragraphs (a) and (b) are revised to read as follows:

§ 74.73 Accounting basis for reports; the financial status report.

(a) Each grantee shall report program outlays and program income on the same accounting basis, i.e., cash or

accrued expenditure (accrual), that it uses in its accounting system.

(b) The Secretary may require a grantee to use Standard Form 269, Financial Status Report, to report the status of funds for nonconstruction grants.

* * * * *

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110)

6. In § 74.74, paragraphs (a), (c), and (d) are revised to read as follows:

§ 74.74 Federal cash transactions report.

(a) *Reporting payments.* (1) The Secretary may require a grantee to submit Standard Form 272 to report payments under a grant.

(2) This report is used by the Secretary to monitor cash advanced to the grantee and to obtain disbursement or outlay information for each grant. The Secretary may also use this form to determine the status of funds for a nonconstruction grant.

* * * * *

(c) *Cash in hands of secondary recipients.* If the submission of a report is considered necessary and feasible by the Secretary, the Secretary may require a grantee to report the amount of cash subadvances in excess of three days' need in the hands of its subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(d) *Frequency and due date.* A grantee shall submit the report on a quarterly basis. If a Department grant authorizes advances at an annualized rate of one million dollars or more, the Secretary may require submission of the report on a monthly basis.

(Authority: 20 U.S.C. 1221-3(a)(1) and 3474, OMB Circular A-110)

7. Section 74.75 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b), to read as follows:

§ 74.75 Request for advance or reimbursement.

(a) The Secretary includes in the terms and conditions of a grant—

(1) Whether the grantee will be paid by advance or reimbursement; and

(2) Instructions regarding how the grantee must request advances or reimbursements under the grant.

(b) Pursuant to any applicable regulations, the Secretary may change, at any time, the method of making payments to a grantee.

* * * * *

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110)

§ 74.76 [Amended]

8. Section 74.76(c) is amended by removing "by 74.73(b)" and adding in its place "by 74.73(a)".

9. Section 74.91 is amended by removing the definition "Advance by Treasury check" and by adding a definition of "Advance" in its place, to read as follows:

§ 74.91 Definitions.

* * * * *

"Advance" is a payment made by the Department to a grantee, upon its periodic request or through the use of predetermined payment schedules, before outstanding obligations are liquidated by the grantee.

* * * * *

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110)

10. Section 74.93 is revised to read as follows:

§ 74.93 Payment methods under Department grants.

The Department makes payments to a grantee using the most efficient and cost-effective method available in accordance with Treasury Circular 1075 (31 CFR Part 205) and any supplementary instructions prescribed by the Department of the Treasury.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110)

§ 74.94 [Removed]

11. Section 74.94 is removed.

12. Section 74.96 is revised to read as follows:

§ 74.96 Establishing frequency of payments.

The Secretary establishes, in the terms and conditions of a grant, the frequency of the grantee's request for payments.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110)

13. Section 74.172 is revised to read as follows:

§ 74.172 Institutions of higher education.

Institutions of higher education shall comply with the cost principles stated in Appendix D to this Part.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circulars A-110, A-21)

14. Section 74.175 is revised to read as follows:

§ 74.175 Subgrants to commercial organizations

(a) The cost principles applicable to a subgrantee or cost-type contractor under a grant are not necessarily the same as those applicable to the grantee. For example, if a State government awards

a subgrant or cost-type contract to an institution of higher education, OMB Circular A-21, as specified in § 74.172, applies to the costs incurred by the institution of higher education, even though OMB Circular A-87 applies to the costs incurred by the State.

(b) If the Secretary makes a grant to a for-profit organization, the Secretary uses the cost principles in the Federal Acquisition Regulation, 48 CFR Part 31, to determine the allowability of costs. In making a grant to such an organization, the Secretary does not pay any fee or other element above actual costs that may inure to the benefit of the owners of the organizations.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110)

15. Appendix D is revised to read as follows:

Appendix D—Principles for Determining Costs Applicable to Grants, Contracts, and Other Agreements With Educational Institutions

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A. Purpose and Scope

1. *Objective.* This Attachment provides principles for determining the costs applicable to research and development, training, and other sponsored work performed by colleges and universities under

grants, contracts, and other agreements with the Federal Government. These agreements are referred to as sponsored agreements.

2. *Policy guides.* The successful application of these cost accounting principles requires development of mutual understanding between representatives of universities and of the Federal Government as to their scope, implementation, and interpretation. It is recognized that—

a. The arrangements for Federal agency and institutional participation in the financing of a research, training, or other project are properly subject to negotiation between the agency and the institution concerned, in accordance with such Government-wide criteria or legal requirements as may be applicable.

b. Each institution, possessing its own unique combination of staff, facilities, and experience, should be encouraged to conduct research and educational activities in a manner consonant with its own academic philosophies and institutional objectives.

c. The dual role of students engaged in research and the resulting benefits to sponsored agreements are fundamental to the research effort and shall be recognized in the application of these principles.

d. Each institution, in the fulfillment of its obligations, should employ sound management practices.

e. The application of these cost accounting principles should require no significant changes in the generally accepted accounting practices of colleges and universities. However, the accounting practices of individual colleges and universities must support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to sponsored agreements.

f. Cognizant Federal agencies involved in negotiating indirect cost rates and auditing should assure that institutions are generally applying these cost accounting principles on a consistent basis. Where wide variations exist in the treatment of a given cost item among institutions, the reasonableness and equitableness of such treatments should be fully considered during the rate negotiations and audit.

3. *Application.* These principles shall be used in determining the allowable costs of work performed by colleges and universities under sponsored agreements. The principles shall also be used in determining the costs of work performed by such institutions under subgrants, cost-reimbursement subcontracts, and other awards made to them under sponsored agreements. They also shall be used as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

a. Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees of an institution.

b. Capitation awards.

c. Other awards under which the institution is not required to account to the Government for actual costs incurred.

B. Definition of Terms.

1. *Major functions of an institution* refers to instruction, organized research, other sponsored activities, and other institutional activities as defined below:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in c. below, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a noncredit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted by the institution under an internal application of institutional funds. University research, for purposes of this document, may be considered a part of the instruction function, or may be combined with sponsored research under the function, of organized research, or may be treated as a separate major function, as agreed to with the cognizant agency.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects, and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except: (1) instruction, departmental research, organized research, and other sponsored activities, as

defined above; (2) indirect cost activities identified in Section F, and (3) specialized service facilities described in Section J38. Other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartment, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to sponsored agreements, unless otherwise indicated in the agreements.

d. *Other institutional activities* means all activities of an institution except: (1) instruction, departmental research, organized research, and other sponsored activities, as defined above; (2) indirect cost activities identified in Section F, and (3) specialized service facilities described in Section J38. Other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartment, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to sponsored agreements, unless otherwise indicated in the agreements.

2. *Sponsored agreement*, for purposes of this circular, means any grant, contract, or other agreement between the institution and the Federal Government.

3. *Allocation* means the process of assigning a cost, or a group of costs, to one or more cost objectives, in reasonable and realistic proportion to the benefit provided or other equitable relationship. A cost objective may be a major function of the institution, a particular service or project, a sponsored agreement, or an indirect cost activity, as described in Section F. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate costs objectives.

C. Basic Considerations

1. *Composition of total costs.* The cost of a sponsored agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution, less applicable credits as described in 5 below.

2. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are: (a) they must be reasonable; (b) they must be allocable to sponsored agreements under the principles and methods provided herein; (c) they must be given consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances; and (d) they must conform to any limitations or exclusions set forth in these principles or in the sponsored agreement as to types and amounts or costs items.

3. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor, reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was

made. Major considerations involved in the determination of the reasonableness of a cost are: (a) whether or not the cost is of a type generally recognized as necessary for the operation of the institution of the performance of the sponsored agreement; (b) the restraints or requirements imposed by such factors as arm's-length bargaining, Federal and State laws and regulations, and sponsored agreement terms and conditions; (c) whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the institution, its employees, its students, the Government, and the public at large; and (d) the extent to which the actions taken with respect to the incurrence of the cost are consistent with established institutional policies and practices applicable to the work of the institution generally, including sponsored agreements.

4. Allocable costs.

a. A cost is allocable to a particular cost objective (i.e., a specific function, project, sponsored agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a sponsored agreement if (1) it is incurred solely to advance the work under the sponsored agreement; (2) its benefits both the sponsored agreement and other work of the institution, in proportions that can be approximated through use of reasonable methods, or (3) it is necessary to the overall operation of the institution and, in light of the principles provided in this Circular, is deemed to be assignable in part to sponsored projects. Where the purchase of equipment or other capital items is specifically authorized under a sponsored agreement, the amounts thus authorized for such purchases are assignable to the sponsored agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular sponsored agreement under the standards provided in this Circular may not be shifted to other sponsored agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the sponsored agreement, or for other reasons of convenience.

5. Applicable credits.

a. The term applicable credits refers to those receipts or negative expenditures that operate to offset or reduce direct or indirect cost items. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges. This term also includes "educational discounts" on products or services provided specifically to educational institutions, such as discounts on computer equipment, except where the arrangement is clearly and explicitly identified as a gift by the vendor.

b. In some instances, the amounts received from the Federal Government to finance institutional activities or service operations

should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the institution in determining the rates or amounts to be charged to sponsored agreements for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds. (See Sections F8, J9a, and J38 for areas of potential application in the matter of direct Federal financing.)

6. *Costs incurred by State and local governments.* Costs incurred or paid by State or local governments on behalf of their colleges and universities for fringe benefit programs such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the institutions are allowable costs of such institutions whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

a. The costs meet the requirements of C1 through 5 above.

b. The costs are properly supported by cost allocation plans in accordance with applicable Federal cost accounting principles.

c. The costs are not otherwise borne directly or indirectly by the Federal Government.

7. Limitations on allowance of costs.

Sponsored agreements may be subject to statutory requirements that limit the allowance of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this Circular, the amount not recoverable under a sponsored agreement may not be charged to other sponsored agreements.

D. Direct Costs

1. *General.* Direct costs are those costs that can be identified specifically with a particular sponsored project, and instructional activity, or any other institutional activity; or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

2. *Application to sponsored agreements.* Identification with the sponsored work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of sponsored agreements. Typical costs charged directly to a sponsored agreement are the compensation of employees for performance of work under the sponsored agreement, including related fringe benefit costs to the extent they are consistently treated, in like circumstances, by the institution as direct rather than indirect costs; the costs of materials consumed or expended in the performance of the work; and other items of expense incurred for the sponsored agreement, including extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of sponsored agreements, provided such items are consistently treated, in like circumstances, by the institution as direct rather than indirect costs, and are charged under a recognized method of computing

actual costs, and conform to generally accepted cost accounting practices consistently followed by the institution.

E. Indirect Costs

1. *General.* Indirect costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, and instructional activity, or any other institutional activity. At educational institutions such costs normally are classified under the following indirect cost categories: depreciation and use allowances, general administration expenses, sponsored projects administration expenses, operation and maintenance expenses, library expenses, departmental administration expenses, and student administration and services.

2. Criteria for distribution.

3. *Base period.* A base period for distribution of indirect costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the indirect cost allocation process is to distribute the indirect costs described in Section F to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the indirect cost categories referred to in E1 above. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in c below. Each such pool or cost grouping should then be distributed individually to the related cost objectives, using the distribution base or method most appropriate in the light of the guides set forth in d below.

c. *General considerations on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groupings (based on account classification or analysis) within an indirect cost category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in E2b and d.

(2) Where any types of expense ordinarily treated as general administration or departmental administration are charged to sponsored agreements as direct costs,

expenses applicable to other activities of the institution when incurred for the same purposes in like circumstances must, through separate cost groupings, be excluded from the indirect costs allocable to those sponsored agreements and included in the direct cost of other activities for cost allocation purposes.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(4) Where activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

(5) Where the institution elects to treat fringe benefits as indirect charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. Selection of distribution method.

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

(2) Where a cost grouping can be identified directly with the cost objective benefited, it should be assigned to that cost objective.

(3) Where the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if appropriate. Cost analysis studies, however, must (a) be appropriately documented in sufficient detail for subsequent review by the cognizant Federal agency, (b) distribute the costs to the related cost objectives in accordance with the relative benefits derived, (c) be statistically sound, (d) be performed specifically at the institution at which the results are to be used, and (e) be reviewed periodically, but not less frequently than every two years, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution shall be made in accordance with the appropriate base cited in Section F., unless one of the following conditions is met: (a) it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored agreements, or (b) the institution qualifies for, and elects to use, the simplified method for computing indirect cost rates described in Section H.

e. Order of Distribution.

(1) Indirect cost categories consist of depreciation and use allowance, operation and maintenance, general administration and general expenses, departmental administration, sponsored projects administration, library, and student administration and services, as described in Section F.

(2) Depreciation and use allowances, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining indirect cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in (3) below, this order of allocation does not apply.

(3) Normally an indirect cost category will be considered closed once it has been allocated to their cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories described in Section F is required.

F. Identification and Assignment of Indirect Costs

1. Depreciation and use allowances.

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with Section J9.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated in the following manner:

(1) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(2) Depreciation or use allowances on buildings, used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and restrooms.

(3) Depreciation or use allowances on buildings and capital improvements where

space is used jointly, and on equipment used jointly, shall be allocated to benefiting functions in proportion to the total salaries and wages applicable to the joint functions.

(4) Depreciation or use allowances on buildings, capital improvements, and equipment used predominantly for one function and only incidentally for other(s), may be assigned to the function in which it is used predominantly.

(5) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category shall be assigned to the instruction functions of the institution. The amount allocated to the employee category shall be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

2. Operation and maintenance expenses.

a. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; and care of grounds and maintenance and operation of buildings and other plant facilities. The operation and maintenance expenses category should also include the fringe benefit costs applicable to the salaries and wages included therein, and depreciation and use allowance.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated in the same manner as described in Section F1b for depreciation and use allowances.

3. General administration and general expenses.

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution; i.e., solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of operation and maintenance expense, and depreciation and use allowances.

General administration and general expenses shall not include expenses incurred within nonuniversity-wide deans' offices, academic departments, organized research units, or similar organizational units. (See section F.4., departmental administration expenses.)

Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be grouped first, according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to serviced or benefited functions on the modified total cost basis. Modified total costs consist of salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to \$25,000 each. When an activity included in this indirect cost category provides a service or product to another institution or organization, and appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

4. Departmental administration expenses.

a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including departmental heads), and other professional personnel conducting research and/or instruction, shall be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance shall be added to the computation of the indirect cost rate for major functions in section C; the expenses covered by the allowance shall be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

(b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in (1) and (2) above are allowable, as well as an appropriate share of general administration and general expenses, operation and maintenance expenses, and depreciation and/or use allowances.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school shall be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's

share of the expenses allocated in (1) above shall be allocated to the appropriate functions of the department on the modified total cost basis.

5. Sponsored projects administration.

(a) The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal) special security, purchasing, personnel administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, stenographic pools and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation/use allowances. Appropriate adjustments will be made for services provided to other functions or organizations.

Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

c. An appropriate adjustment shall be made to eliminate any duplicate charges to sponsored agreements when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect cost items, such as accounting, procurement, or personnel administration.

6. Library expenses.

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under Section C5. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation and use allowances. Costs incurred in the purchases of rare books (museum-type books) with no value to sponsored agreements should not be allocated to them.

b. In the absence of the alternatives provided for in Section E2d, the expenses included in this category shall be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category shall consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category shall consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis.

(3) The other users category shall consist of all other users of library facilities.

c. Amounts allocated in b above shall be assigned further as follows: (1) The amount in the student category shall be assigned to the instruction function of the institution.

(2) The amount in the professional employee category shall be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category shall be assigned to the other institutional activities function of the institution.

7. Student administration and services.

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations.

The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to Student Administration is determined in accordance with Section J.6. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, and use allowances and/or depreciation.

b. In the absence of the alternatives provided for in Section E2d, the expenses in this category shall be allocated to the instruction function, and subsequently to sponsored agreements in that function.

8. Offset for indirect expenses otherwise provided for by the Government.

a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in F1 through 7 above.

b. The items in this group shall be treated as a credit to the affected individual indirect cost category before that category is allocated to benefiting functions.

G. Determination and Application of Indirect Cost Rate or Rates

1. Indirect cost pools.

a. Subject to b below, the separate categories of indirect costs allocated to each major function of the institution as prescribed in Section f shall be aggregated and treated as a common pool for that function. The amount in each pool shall be divided by the distribution base described in G2 below to arrive at a single indirect cost rate for each function. The rate for each function is used to distribute indirect costs to individual sponsored agreements of that function. Since a common pool established for each major function of the institution, a separate indirect

cost rate would be established for each of the major functions described in Section B1 under which sponsored agreements are carried out.

b. In some instances a single rate basis for use across the board on all work within a major function at an institution may not be appropriate. A single rate for research, for example, might not take into account those different environmental factors and other conditions which may affect substantially the indirect costs applicable to a particular segment of research at the institution. A particular segment of research may be that performed under a single sponsored agreement or it may consist of research under a group or sponsored agreement performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of a sponsored agreement is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the regular course of the rate determination process and the separate indirect cost rate resulting therefrom should be utilized; provided it is determined that (1) such indirect cost rate differs significantly from that which would have been obtained under a. above, and (2) the volume of work to which such rate would apply is material in relation to other sponsored agreements at the institution.

2. *The distribution basis.* Indirect costs shall be distributed to applicable sponsored agreements on the basis of modified total direct costs, consisting of salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to \$25,000 each. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to G1, above. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the modified total direct costs identified with such pool. Other bases may be used where it can be demonstrated that they produce more equitable results.

3. Negotiated lump sum for indirect costs.

A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect services cannot be readily determined. Such negotiated indirect costs will be treated as an offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. *Predetermined fixed rates for indirect costs.* Public Law 87-638 (78 Stat. 437) authorizes the use of predetermined fixed

rates in determining the indirect costs applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, consideration should be given to the negotiation of predetermined fixed rates for indirect costs in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting period.

5. Negotiated fixed rates and carry-forward provisions.

When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect costs allocable to sponsored agreements for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions or prior years shall not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant Federal agency as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change without prior approval of the cognizant Federal agency. In the event that an institution returns to a postdetermined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent postdetermined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

H. Simplified Method for Small Institutions

1. General.

a. Where the total direct cost of work covered by this Circular at an institution does not exceed \$3,000,000 in a fiscal year, the use of the simplified procedure described in 2, below, may be used in determining allowable indirect costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information with salaries and wages segregated from other costs, will be utilized as a basis for determining the indirect cost rate applicable to all sponsored agreements.

b. The simplified procedure should not be used where it produces results which appear

inequitable to the Government or the institution. In any such case, indirect costs should be determined through use of the regular procedure.

2. Simplified procedure.

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of cost of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant; and depreciation and use allowances; after appropriate adjustment for costs applicable to other institutional activities.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under (1) above have previously been allocated to other institutional activities, they may be included in the indirect cost pool. The total amount of salaries and wages included in the indirect cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in a above the amount of salaries and wages included under b above.

d. Establish the indirect cost rate, determined by dividing the amount in the indirect cost pool, b above, by the amount of the distribution base, c above.

e. Apply the indirect cost rate to direct salaries and wages for individual agreements to determine the amount of indirect costs allocable to such agreements.

J. General Provisions for Selected Items of Cost

Sections 1 through 44 below provide principles to be applied in establishing the allowability of certain items involved in determining cost. These principles should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment provided for similar or related items of cost. In case of a discrepancy between the provisions of a specific sponsored agreement and the provisions below, the agreement should govern.

1. Advertising costs.

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The only advertising costs allowable are those which are solely for (1) the recruitment of personnel required for the performance by the institution of obligations arising under the

sponsored agreement, when considered in conjunction with all other recruitment costs, as set forth in Section J32; (2) the procurement of goods and services for the performance of the sponsored agreement; (3) the disposal of scrap or surplus materials acquired in the performance of the sponsored agreement except when institutions are reimbursed for disposal costs at a predetermined amount in accordance with Attachment N, OMB Circular No. A-110; or (4) other specific purposes necessary to meet the requirements of the sponsored agreement.

c. Costs of this nature, if incurred for more than one sponsored agreement or for both sponsored work and other work of the institution, are allowable to the extent that the principles in Sections D and E are observed.

2. *Bad debts.* Any losses, whether actual or estimated, arising from uncollectible accounts and other claims, related collections costs, and related legal costs, are unallowable.

3. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, firefighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institutions' premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth in Section J9. Costs of local civil defense projects not on the institution's premises are unallowable.

4. *Commencement and convocation costs.* Costs incurred for commencements and convocations are unallowable, except as provided for in Section F7.

5. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams radiograms, postage and the like, are allowable.

6. Compensation for personal services

a. *General.* Compensation for personal services covers all amounts paid currently or accrued by the institution for services of employees rendered during the period of performance under sponsored agreements. Such amounts include salaries, wages, and fringe benefits (See Section J15.). These costs are allowable to the extent that the total compensation to individual employees conforms to the established policies of the institution, consistently applied, and provided that the charges for work performed directly on sponsored agreements and for other work allocable as indirect costs are determined and supported as provided below. Charges to sponsored agreements may include reasonable amounts for activities contributing and intimately related to work under the agreements, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, participating in appropriate seminars, consulting with colleagues and graduate

students, and attending meetings and conferences. Incidental work (that in excess of normal for the individual), for which supplemental compensation is paid by an institution under institutional policy, need not be included in the payroll distribution systems described below, provided such work and compensation are separately identified and documented in the financial management system of the institution.

b.(1) *General Principles.* (a) The distribution of salaries and wages whether treated as direct or indirect costs, will be based on payrolls documented in accordance with the generally accepted practices of colleges and universities. Institutions may include in a residual category all activities that are not directly charged to sponsored agreements, and that need not be distributed to more than one activity for purposes of identifying indirect costs and the functions to which they are allocable. The components of the residual category are not required to be separately documented.

(b) The apportionment of employee's salaries and wages which are chargeable to more than one sponsored agreement or other cost objective will be accomplished by methods which will (1) be in accordance with Sections A-2 and C above, (2) produce an equitable distribution of charges for employee's activities, and (3) distinguish the employees' direct activities from their indirect activities.

(c) In the use of any methods for apportioning salaries, it is recognized that, in an academic setting, teaching, research, service, and administration are often inextricably intermingled. A precise assessment of factors that contribute to costs is not always feasible, nor is it expected. Reliance, therefore, is placed on estimates in which a degree of tolerance is appropriate.

(d) There is no single best method for documenting the distribution of charges for personal services. Methods for apportioning salaries and wages, however, must meet the criteria specified in J.6.b.(2) below. Examples of acceptable methods are contained in J.6.c. below. Other methods which meet the criteria specified in J.6.b.(2) below also shall be deemed acceptable, if a mutually satisfactory alternative agreement is reached.

(2) *Criteria for Acceptable Methods.* (a) The payroll distribution system will (i) be incorporated into the official records of the institution, (ii) reasonably reflect the activity for which the employee is compensated by the institution, and (iii) encompass both sponsored and all other activities on an integrated basis, but may include the use of subsidiary records. (Compensation for incidental work described in J.6.a. need not be included.)

(b) The method must recognize the principle of after-the-fact confirmation or determination so that costs distributed represent actual costs, unless a mutually satisfactory alternative agreement is reached. Direct cost activities and indirect cost activities may be confirmed by responsible persons with suitable means of verification that the work was performed. Confirmation by the employee is not a requirement for either direct or indirect cost activities if other

responsible persons make appropriate confirmations.

(c) The payroll distribution system will allow confirmation of activity allocable to each sponsored agreement and each of the categories of activity needed to identify indirect costs and the functions to which they are allocable. The activities chargeable to indirect cost categories or the major functions of the institution for employees whose salaries must be apportioned (see J.6.b.1.(b) above), if not initially identified as separate categories, may be subsequently distributed by any reasonable method mutually agreed to, including, but not limited to, suitably conducted surveys, statistical sampling procedures, or the application of negotiated fixed rates.

(d) Practices vary among institutions and within institutions as to the activity constituting a full workload. Therefore, the payroll distribution system may reflect categories of activities expressed as a percentage distribution of total activities.

(e) Direct and indirect charges may be made initially to sponsored agreements on the basis of estimates made before services are performed. When such estimates are used, significant changes in the corresponding work activity must be identified and entered into the payroll distribution system. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term, such as an academic period.

(f) The system will provide for independent internal evaluations to ensure the system's effectiveness and compliance with the above standards.

(g) For systems which meet these standards, the institution will not be required to provide additional support or documentation for the effort actually performed.

c. Examples of Acceptable Methods for Payroll Distribution:

(1) *Plan—Confirmation:* Under this method, the distribution of salaries and wages of professorial or professional staff applicable to sponsored agreements is based on budgeted, planned, or assigned work activity, updated to reflect any significant changes in work distribution. A plan-confirmation system used for salaries and wages charged directly or indirectly to sponsored agreements will meet the following standards:

(a) A system of budgeted, planned, or assigned work activity will be incorporated into the official records of the institution and encompass both sponsored and all other activities on an integrated basis. The system may include the use of subsidiary records.

(b) The system will reasonably reflect only the activity for which the employee is compensated by the institution (compensation for incidental work described in J.6.a. need not be included). Practices vary among institutions and within institutions as to the activity constituting a full workload. Hence, the system will reflect categories of activities expressed as a percentage distribution of total activities. (But see Section H for treatment of indirect costs

under the simplified method for small institutions.)

(c) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify indirect costs and the functions to which they are allocable. The system may treat indirect cost activities initially within a residual category and subsequently determine them by alternate methods as discussed in J.6.b.(2)(c).

(d) The system will provide for modification of an individual's salary or salary distribution commensurate with an significant change in the employee's work activity. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term such as an academic period. Whenever it is apparent that a significant change in work activity which is directly or indirectly charged to sponsored agreements will occur or has occurred, the change will be documented over the signature of a responsible official and entered into the system.

(e) At least annually a statement will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed, stating that salaries and wages charged to sponsored agreements as direct charges, and to residual, indirect cost or other categories are reasonable in relation to work performed.

(f) The system will provide for independent internal evaluation to ensure the system's integrity and compliance with the above standards.

(g) In the use of this method, an institution shall not be required to provide additional support or documentation for the effort actually performed.

(2) *After-the-fact Activity Records:* Under this system the distribution of salaries and wages by the institution will be supported by activity reports as prescribed below.

(a) Activity reports will reflect the distribution of activity expended by employees covered by the system (compensation for incidental work as described in J.6.a. need not be included).

(b) These reports will reflect an after-the-fact reporting of the percentage distribution of activity of employees. Charges may be made initially on the basis of estimates made before the services are performed, provided that such charges are promptly adjusted if significant differences are indicated by activity records.

(c) Reports will reasonably reflect the activities for which employees are compensated by the institution. To confirm that the distribution of activity represents a reasonable estimate of the work performed by the employee during the period, the reports will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed.

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify indirect costs and the functions to which they are allocable. The system may treat indirect cost activities initially within a residual category

and subsequently determine them by alternate methods as discussed in J.6.b.(2)(c).

(e) For professorial and professional staff, the reports will be prepared each academic term, but no less frequently than every six months. For other employees, unless alternate arrangements are agreed to, the reports will be prepared no less frequently than monthly and will coincide with one or more pay periods.

(f) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purpose provided that they meet the requirements in (a) through (e) above.

(3) *Multiple Confirmation Records:* Under this system the distribution of salaries and wages of professorial and professional staff will be supported by records which certify separately for direct and indirect cost activities as prescribed below.

(a) For employees covered by the system, there will be direct cost records to reflect the distribution of that activity expended which is to be allocable as direct cost to each sponsored agreement. There will also be indirect cost records to reflect the distribution of that activity to indirect costs. These records may be kept jointly or separately (but are to be certified separately, see below).

(b) Salary and wage charges may be made initially on the basis of estimates made before the services are performed provided that such charges are promptly adjusted if significant differences occur.

(c) Institutional records will reasonably reflect only the activity for which employees are compensated by the institution (compensation for incidental work as described in J.6.a. need not be included).

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify indirect costs and the functions to which they are allocable.

(e) To confirm that distribution of activity represents a reasonable estimate of the work performed by the employee during the period the record for each employee will include:

(1) The signature of the employee or of a person having direct knowledge of the work, confirming that the record of activities allocable as direct costs of each sponsored agreement is appropriate.

(2) The record of indirect costs will include the signature of responsible person(s) who use suitable means of verification that the work was performed and is consistent with the overall distribution of the employee's compensated activities.

These signatures may all be on the same document.

(f) The reports will be prepared each academic term, but no less frequently than every six months.

(g) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purpose provided they meet the requirements in (a) through (f) above.

d. *Salary rates for faculty members.*

(1) *Salary rates for academic year.* Charges for work performed on sponsored agreements by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the policy of the institution concerned, constitutes the basis of his salary. Charges for work performed on sponsored agreements during all or any portion of such period are allowable at the base salary rate. In no event will charges to sponsored agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period. This principle applies to all members of the faculty at an institution. Since intra-university consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time base salary, the principle also applies to faculty members who function as consultants or otherwise contribute to a sponsored agreement conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided that such consulting arrangements are specifically provided for in the agreement or approved in writing by the sponsoring agency.

(2) *Periods outside the academic year.*

(a) Except as otherwise specified for teaching activity in (b) below, charges for work performed by faculty members on sponsored agreements during the summer months or other period not included in the base salary period will be determined for each faculty member at a rate not in excess of the base salary divided by the period to which the base salary relates, and will be limited to charges made in accordance with other parts of this section. The base salary period used in computing charges for work performed during the summer months will be the number of months covered by the faculty member's official academic year appointment.

(b) Charges for teaching activities performed by faculty members on sponsored agreements during the summer months or other periods not included in the base salary period will be based on the normal policy of the institution governing compensation to faculty members for teaching assignments during such periods.

(3) *Part-time faculty.* Charges for work performed on sponsored agreements by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for the part-time assignments; e.g., an institution pays \$5,000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time to a sponsored agreement. Thus, his additional compensation, chargeable by the institution to the agreement, would be one-half of \$5,000, or \$2,500.

e. *Noninstitutional professional activities.* Unless an arrangement is specifically authorized by a Federal sponsoring agency,

an institution must follow its institution-wide policies and practices concerning the permissible extent of professional services that can be provided outside the institution for noninstitutional compensation. Where such institution-wide policies do not exist or do not adequately define the permissible extent of consulting or other noninstitutional activities undertaken for extra outside pay, the Government may require that the effort of professional staff working on sponsored agreements be allocated between (1) institutional activities, and (2) noninstitutional professional activities. If the sponsoring agency considers the extent of noninstitutional professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

7. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events, the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. (But see also Section J18c.)

8. *Deans of faculty and graduate schools.* The salaries and expenses of deans of faculty and graduate schools, or their equivalents, and their staffs, are allowable.

9. *Depreciation and use allowances.* Institutions may be compensated for the use of their buildings, capital improvements, and equipment; provided that they are used, needed in the institutions' activities, and properly allocable to sponsored agreements. Such compensation shall be made by computing either depreciation or use allowance. Use allowances are the means of providing such compensation when depreciation or other equivalent costs are not computed. The allocation for depreciation or use allowance shall be made in accordance with Section F1. Depreciation and use allowances are computed applying the following rules:

a. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. For this purpose, the acquisition cost will exclude (1) the cost of land; (2) any portion of the cost of buildings and equipment borne by or donated by the Government, irrespective of where title was originally vested or where it is presently located; and (3) any portion of the cost of buildings and equipment contributed by or for the institution where law or agreement prohibit recovery. For an asset donated to the institution by a third party, its fair market value at the time of the donation shall be considered as the acquisition cost.

b. In the use of the depreciation method, the following shall be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating

that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straightline method shall be presumed to be the appropriate method. Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency.

(3) Where the depreciation method is introduced for application to assets for which use allowance was previously charged, the aggregate amount of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets.

(4) When the depreciation method is used for buildings, a building "shell" may be treated separately from other building components, such as plumbing system and heating and air conditioning system. Each component item may then be depreciated over its estimated useful life. On the other hand, the entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life.

(5) Where the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that have outlived their depreciable lives. (But see also c(3), below.)

c. Under the use allowance method, the following shall be observed:

(1) The use allowance for buildings and improvements (including improvements such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost.

(2) In contrast to the depreciation method, the entire building must be treated as a single asset without separating its "shell" from other building components under the use allowance method. The entire building must be treated as a single asset, and the two-percent use allowance limitation must be applied to all parts of the building. The two-percent limitation, however, need not be applied to equipment or other assets that are merely attached or fastened to the building but not permanently fixed and are used as furnishings, decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, and carpeting). Such equipment and assets will be considered as not being permanently fixed to the building if they can be removed without the need for costly or extensive alterations or repairs to the building to make the space usable for other purposes. Equipment and assets which meet these criteria will be subject to the six and two-thirds percent equipment use allowance.

(3) A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the Government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to

the utilization of the asset for the purpose contemplated.

d. Except as otherwise provided in b and c above, a combination of the depreciation and use allowance methods may not be used, in like circumstances, for a single class of assets (e.g., buildings, office equipment, and computer equipment).

e. Charges for use allowances or depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, when the depreciation method is used, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

10. *Donated services and property.* The value of donated services and property are not allowable either as a direct or indirect cost, except that depreciation or use allowances on donated assets are permitted in accordance with Section J9a. The value of donated services and property may be used to meet cost sharing or matching requirements, in accordance with OMB Circular No. A-110.

11. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid clinics and/or infirmaries, recreational activities, employees, counseling services, and other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable.

13. *Equipment and other capital expenditures.*

a. For purposes of this paragraph, the following definitions apply:

(1) *Equipment* means an article of nonexpendable tangible personal property having a useful life of more than two years, and an acquisition cost of \$500 or more per unit. However, consistent with institutional policy, lower limits may be established.

(2) *Capital expenditure* means the cost of the asset including the cost to put it in place. Capital expenditure for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective intransit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the institution's regular accounting practices.

(3) *Special purpose equipment* means equipment which is used only for research,

medical, scientific, or other technical activities.

(4) *General purpose equipment* means equipment, the use of which is not limited only to research, medical, scientific or other technical activities. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and the land are unallowable as direct charges, except where approved in advance by the sponsoring agency.

(2) Capital expenditures for special purpose equipment are allowable as direct charges, provided that the acquisition of items having a unit cost of \$1,000 or more is approved in advance by the sponsoring agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as direct charges, except where approved in advance by the sponsoring agency.

(4) Capital expenditures are unallowable as indirect costs. But see Section J9 for allowability of depreciation or use allowance on buildings, capital improvements, and equipment. Also see Section J33 for allowability of rental costs on land, buildings, and equipment.

14. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with Federal, State, and local laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the sponsoring agreement, or instructions in writing from the contracting officer or equivalent.

15. *Fringe benefits.*

a. Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, military leave, and the like, are allowable, provided such costs are distributed to all institutional activities in proportion to the relative amount of time or effort actually devoted by the employees. See Section J35 for treatment of sabbatical leave.

b. Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, tuition or remission of tuition for individual employees or their families and the like are allowable, provided such benefits are granted in accordance with established institutional policies, and are distributed to all institutional activities on an equitable basis. See Section J36b for treatment of tuition remission provided to students.

c. Rules for pension plan costs are as follows:

(1) Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided (a) such policies meet the test of reasonableness; (b) the methods of cost allocation are equitable for all activities;

(c) the amount of pension cost assigned to each fiscal year is determined in accordance with (2) below; and (d) the cost assigned to a given fiscal year is paid or funded for all plan participants within six months after the end of that year.

(2) The amount of pension cost assigned to each fiscal year shall be determined in accordance with generally accepted accounting principles. Institutions may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Cost" (4 CFR Part 412).

(3) Premiums paid for pension plan termination insurance pursuant to the Employee Retirement Income Security Act of 1974 (Public Law 93-406) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and prohibited transactions of pension plan fiduciaries imposed under the Employee Retirement Income Security Act are also unallowable.

d. Fringe benefit may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of the salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, if the costs in relationship to salaries and wages differ significantly for different groups of employees. Also fringe benefits related to institutional salaries and wages treated as direct costs may be treated as direct costs.

16. *Insurance and indemnification.*

a. Costs of insurance required or approved, and maintained, pursuant to the sponsored agreement, are allowable.

b. Costs of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations: (1) types and extent and cost of coverage must be in accordance with sound institutional practice; (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to Government-owned property are unallowable, except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for a self-insurance program are allowable, to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (whether through purchased insurance or self-insurance) are unallowable, unless expressly provided for in the sponsored agreement, except that costs incurred because of losses not covered under existing deductible clauses for insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided for in the sponsored agreement, except as provided in d above.

17. Interest, fund raising, and investment management costs.

a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable, except as indicated in e below.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are unallowable.

c. Cost of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

d. Costs related to the physical custody and control of monies and securities are allowable.

e. The cost of interest paid to an external party is allowable where associated with the following assets, provided the assets are used in support of sponsored agreements, and the total cost (including depreciation or use allowances, operation and maintenance costs, interest etc.) does not exceed the rental cost of comparable assets in the same locality.

(1) Buildings acquired or completed on or after July 1, 1982.

(2) Major reconstruction and remodeling of existing buildings completed on or after July 1, 1982.

(3) Acquisition or fabrication of capital equipment (as defined in paragraph J.13, "Equipment and other capital expenditures") completed on or after July 1, 1982, costing \$10,000 or more, if agreed to by the Government.

18. Labor relations costs. Costs incurred in maintaining satisfactory relations between the institution and its employees, including cost of labor management committees, employees' publications, and other related activities, are allowable.

19. Losses on other sponsored agreements or contracts. Any excess of costs over income under any other sponsored agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contribution portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect costs.

20. Maintenance and repair costs. Costs incurred for necessary maintenance, repair or upkeep of property (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life but keep it in an efficient operating condition, are allowable.

21. Material costs. Costs incurred for purchased materials, supplies, and fabricated parts directly or indirectly related to the sponsored agreements, are allowable. Purchases made specifically for the sponsored agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates,

and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the institution. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the sponsored agreement, and due credit should be given for any excess materials retained, or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the sponsored agreement. Where Government-donated or furnished material is used in performing the sponsored agreement such material will be used without charge.

22. Memberships, subscriptions and professional activity costs.

a. Costs of the institution's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the institution's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

23. Patent costs. Costs of preparing disclosures, reports, and other documents required by the sponsored agreement, and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the sponsored agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also Section J34.)

24. Plant security costs. Necessary expenses incurred to comply with security requirements, including wages, uniforms and equipment of personnel engaged in plant protection, are allowable.

25. Preagreement costs. Costs incurred prior to the effective date of the sponsored agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless approved by the sponsoring agency.

26. Professional service costs.

a. Costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable, subject to b and c below, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of sponsored agreements; (2) the impact of sponsored agreements on the institution's total activity; (3) the nature and scope of managerial services expected of the institution's own organizations; and (4)

whether the proportion of Government work to the institution's total activity is such as to influence the institution in favor of incurring the costs, particularly where the services rendered are not of a continuing nature and have little relationship to work under sponsored agreements.

c. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored agreements.

27. Profits and losses on disposition of plant equipment or other capital assets. Profits or losses arising from the sale or exchange of plant, facilities, equipment or other capital assets, including sale or exchange of either short-term or long-term investments, shall not be considered in computing the costs of sponsored agreements except for pension plans as provided in Section J15c. When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds shall be made in accordance with Attachment N, OMB Circular No. A-110.

28. Proposal costs. Proposal costs are the costs of preparing bids or proposals on potential Government and nongovernment sponsored agreements or projects, including the development of data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable to the current period. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

29. Public information services costs. Cost of news releases pertaining to specific research or scientific accomplishment are allowable, when they result from performance of sponsored agreements.

30. Rearrangement and alteration costs. Cost incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by the sponsoring agency.

31. Reconversion costs. Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of a sponsored agreement, fair wear and tear excepted, are allowable.

32. Recruiting costs.

a. Subject to b, c, and d below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating

an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after hire, the institution will be required to refund or credit such relocation costs to the Government.

33. Rental cost of buildings and equipment.

a. Rental costs of buildings or equipment are allowable to the extent that the decision to rent or lease is in accord with Section C-3. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed if the institution continued to own the property.

c. Rental costs under "less-than-arms-length" leases are allowable only up to the amount that would be allowed if the institution owned the property. For this purpose, a "less-than-arms-length" lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other.

d. Where significant rental costs are incurred under leases which create a material equity in the leased property, they are allowable only up to the amount that would be allowed if the institution purchased the property on the date the lease agreement was executed. For this purpose, a material equity in the property exists when the lease:

(1) is noncancelable or is cancelable only upon the occurrence of some remote contingency, and

(2) has one or more of the following characteristics:

(a) Title to the property passes to the institution at some time during or after the lease period.

(b) The term of the lease corresponds substantially to the estimated useful life of the property (i.e., the period of economic usefulness to the legal owner of the property).

(c) The initial term is less than the useful life of the property and the institution has the

option to renew the lease for the remaining useful life at substantially less than fair rental value.

(d) The property was acquired by the lessor to meet the special needs of the institution and will probably be usable only for that purpose and only by the institution.

(e) The institution has the right, during or at the expiration of the lease, to purchase the property at a price which at the inception of the lease appears to be substantially less than the probable fair market value at the time it is permitted to purchase the property (commonly called a lease with a bargain purchase option), except for any discount normally given to educational institutions.

34. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto, necessary for the proper performance of the sponsored agreement and applicable to tasks or processes thereunder, are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

35. *Sabbatical leave costs.* Costs of leave of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the institution. Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the institution's actual experience under its sabbatical leave policy.

36. Scholarships and student aid costs.

a. Costs of scholarships, fellowships, and other programs of student aid are allowable only when the purpose of the sponsored agreement is to provide training to selected participants and the charge is approved by the sponsoring agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that (1) there is a bonafide employer-employee relationship between the student and the institution for the work performed, (2) the tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work, and (3) it is the institution's practice to similarly compensate students in nonsponsored as well as sponsored activities.

b. Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages shall be subject to the reporting requirements stipulated in Section J6, and shall be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis.

37. Severance pay.

a. Severance pay is compensation in addition to regular salary and wages which is

paid by an institution to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal recurring turnover and which otherwise meet the conditions of a above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment.

38. Specialized service facilities.

a. The costs of institutional services involving the use of highly complex or specialized facilities such as electronic computers, wind tunnels, and reactors are allowable, provided the charge for the service meets the conditions of b through d below.

b. The cost of each service normally shall consist of both its direct costs and its allocable share of indirect costs with deductions for appropriate income or Federal financing as describing in Section C5.

c. The cost of such institutional services when material in amount will be charged directly to users, including sponsored agreements based on actual use of the services and a schedule of rates that does not discriminate between federally and nonfederally supported activities of the institution, including use by the institution for internal purposes. Charges for the use of specialized facilities should be designed to recover not more than the aggregate cost of the services over a long-term period agreed to by the institution and the cognizant Federal agency. Accordingly, it is not necessary that the rates charged for services be equal to the cost of providing those services during any one fiscal year as long as rates are reviewed periodically for consistency with the longterm plan and adjusted if necessary.

d. Where the costs incurred for such institutional services are not material, they may be allocated as indirect costs. Such arrangements must be agreed to by the institution and the cognizant Federal agency.

e. Where it is in the best interest of the Government and the institution to establish alternative costing arrangements, such arrangements may be worked out with the cognizant Federal agency.

39. *Special services costs.* Costs incurred for general public relations activities, alumni activities, and similar services, are unallowable.

40. *Student activity costs.* Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the sponsored agreements

41. Taxes.

a. In general taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable. Payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (1) taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Government, and in the latter case when the sponsoring agency makes available the necessary exemption certificates; and (2) special assessments on land which represent capital improvements.

b. Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as sponsored agreement costs, will be credited or paid to the Government in the manner directed by the Government. However, any interest actually paid or credited to an institution incident to a refund of tax, interest, and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest, and penalties.

42. *Transportation costs.* Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the sponsored agreement, should be treated as a direct cost.

43. Travel costs.

a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to c, d, e, and f below, when they are directly attributable to specific work under a sponsored agreement or are incurred in the normal course of administration of the institution or a department or program thereof.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission

requirements, such as where less than first-class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

e. Foreign travel costs are allowable only when the travel has received specific prior approval. Each separate foreign trip must be specifically approved. For purposes of this provision, foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. However, for an organization located outside Canada and the United States and its territories and possessions, foreign travel means travel outside that country.

f. Domestic travel costs are allowable when permitted by the sponsored agreement. Expenditures for such travel will not be allowed if they exceed the amount specified by more than 25% or \$500, whichever is greater, except with an advanced approval of the sponsoring agency.

44. Termination costs applicable to sponsored agreements.

a. Termination of sponsored agreements generally gives rise to the incurrence of costs or to the need for special treatment of costs, which would not have arisen had the agreement not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of this Circular in the case of termination.

b. The cost of common items of material reasonably usable on the institution's other work will not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the institution's plans and orders for current and scheduled work. Contemporaneous purchases of common items by the institution will be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allowable to the terminated portion of the agreement should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

c. If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided (1) such special

tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer or equivalent; and (3) the loss of useful value as to any one terminated agreement is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the agreement bears to the entire terminated agreement and other Government agreements for which the special tooling, special machinery, or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated agreement, less the residual value of such leases, if (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the agreement and such further period as may be reasonable; and (2) the institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the agreement, and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers or equivalent of settlement claims and supporting data with respect to the terminated portion of the agreement, and the termination and settlement of subagreements; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the agreement, except when the institution is reimbursed for disposals at a predetermined amount in accordance with the provisions of Circular No. A-110.

g. Claims under subagreements, including the allocable portion of claims which are common to the agreement and to other work of the institution, are generally allowable.

K. Certification of Charges

To assure that expenditures for sponsored agreements are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads essentially as follows: "I certify that all expenditures reported (or payment requested) are for appropriate purposes and in accordance with the provisions of the application and award documents."

PART 75—DIRECT GRANT PROGRAMS

16. The authority citation for Part 75 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, unless otherwise noted.

§ 75.3 [Removed]

17. Section 75.3 is removed.

18. Section 75.4(a)(1) is revised to read as follows:

§ 75.4 Department contracts.

(a) A Federal contract made by the Department is governed by—

(1) Chapters 1 and 34 of Title 48 of the Code of Federal Regulations (Federal Acquisition Regulation and Education Department Acquisition Regulation).

19. New §§ 75.60-75.62 are added and a new center heading is added preceding these sections, to read as follows:

Ineligibility of Certain Individuals To Receive Assistance

§ 75.60 Individuals ineligible to receive assistance.

(a) An individual is ineligible to receive a fellowship, scholarship, or discretionary grant funded by the Department if the individual—

(1) Is not current in repaying a debt owed—

(i) Under a program listed in paragraph (b) of this section; or

(ii) To the Federal government under a nonprocurement transaction; and

(2) Has not made satisfactory arrangements to repay the debt.

(b) An individual who is not current in repaying a debt under a discretionary grant, scholarship, fellowship, or loan program as included in the following list is ineligible under paragraph (a) of this section:

(1) A grant awarded under the Pell Grant (20 U.S.C. 1070a, *et seq.*), Supplemental Educational Opportunity Grant (SEOG) (20 U.S.C. 1070b, *et seq.*), or State Student Incentive Grant (SSIG) (20 U.S.C. 1070c, *et seq.*) program, or a scholarship awarded under the Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, *et seq.*), a fellowship awarded under the Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134k), or a fellowship awarded under the Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134f).

(2) A fellowship awarded under the Christa McAuliffe Fellowship Program (20 U.S.C. 1113-1113e), the Bilingual Education Fellowship Program (20 U.S.C. 3221-3262), or the Rehabilitation Long-Term Training Program (29 U.S.C. 774(b)), or on a repayment obligation incurred under the Paul Douglas Teacher Scholarship Program (20 U.S.C. 1111, *et seq.*).

(3) A loan made under the Perkins Loan Program (20 U.S.C. 1087aa, *et seq.*),

the Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, *et seq.*), the Guaranteed Student Loan (GSL), Supplemental Loans for Students (SLS), PLUS, or Consolidation Loan Program (20 U.S.C. 1071, *et seq.*), or the Cuban Student Loan Program (22 U.S.C. 2601, *et seq.*).

(4) A grant, or a loan, made under the Law Enforcement Education Program (42 U.S.C. 3775).

(5) A stipend awarded under the Indian Fellowship Program (29 U.S.C. 774(b)).

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

§ 75.61 Certification of eligibility; effect of ineligibility.

(a) An individual who applies for a fellowship, scholarship, or discretionary grant from the Department shall provide with his or her application a certification under the penalty of perjury—

(1) That the individual is eligible under § 75.60;

(2) That the individual has not been debarred or suspended by—

(i) This Department under the procedures in Part 85 of this title; or

(ii) Another Federal agency under procedures established under Executive Order 12549.

(b) The Secretary specifies the form of the certification required under paragraph (a) of this section.

(c) The Secretary does not award a fellowship, scholarship, or discretionary grant to an individual who—

(1) Fails to provide the certification required under paragraph (a) of this section; or

(2) Is ineligible, based on information available to the Secretary at the time the award is made.

(d) If a fellowship, scholarship, or discretionary grant is made to an individual who provided a false certification under paragraph (a) of this section, the individual is liable for recovery of the funds made available under the certification, for civil damages or penalties imposed for false representation, and for criminal prosecution under 18 U.S.C. 1001.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3473)

§ 75.62 Requirements applicable to entities making certain awards.

(a) An entity that provides a fellowship, scholarship, or discretionary grant to an individual under a grant from, or an agreement with, the Secretary shall require the individual that applies for such an award to provide with his or her application a certification under the penalty of perjury—

(1) That the individual is eligible under § 75.60;

(2) That the individual has not been debarred or suspended by—

(i) This Department under the procedures in Part 85 of this title; or

(ii) Another Federal agency under procedures established under Executive Order 12549.

(b) An entity subject to this section may not award a fellowship, scholarship, or discretionary grant to an individual if—

(1) The individual fails to provide the certification required under paragraph (a) of this section; or

(2) The Secretary informs the entity that the individual is ineligible under § 75.60.

(c) If a fellowship, scholarship, or discretionary grant is made to an individual who provided a false certification under paragraph (a) of this section, the individual is liable for recovery of the funds made available under the certification, for civil damages or penalties imposed for false representation, and for criminal prosecution under 18 U.S.C. 1001.

(d) The Secretary may require an entity subject to this section to provide a list of the individuals to whom fellowship, scholarship, or discretionary grant awards have been made or are proposed to be made by the entity.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

20. Section 75.105(c)(3) is revised to read as follows:

§ 75.105 Annual priorities.

(c) * * *

(3) *Absolute preference.* The Secretary may give an absolute preference to applications that meet a priority. The Secretary establishes a separate competition for applications that meet the priority and reserves all or part of a program's funds solely for that competition. The Secretary may adjust the amount reserved for the priority after determining the number of high quality applications received.

§§ 75.107, 75.108, 75.110, 75.111, 75.113, 74.114, 75.115, and 75.116 [Removed]

21. Sections 75.107, 75.108, 75.110, 75.111, 75.113, 75.114, 75.115, and 75.116 are removed.

§ 75.118 [Amended]

22. The note following § 75.118 is removed.

§§ 75.130 through 75.134 [Removed]

23. Sections 75.130 through 75.134, and the center heading "PREAPPLICATIONS", are removed.

§§ 75.150 through 75.154 [Removed]

24. Sections 75.150 through 75.154, and the center heading "STATE APPROVAL PROCEDURES", are removed.

25. Section 75.155 is revised and a cross-reference is added following the section to read as follows:

§ 75.155 Review procedures if State may comment on applications: purpose of §§ 75.156-75.158.

If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§ 75.156-75.158.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

Cross-reference: See 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372.

§ 75.160 [Removed]

26. Section 75.160 is removed.

27. Section 75.200 is amended by revising the title and adding paragraphs (b)(4) and (5) to read as follows:

§ 75.200 How applications for new grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.

* * * * *

(b) * * *

(4) The Secretary may award a cooperative agreement instead of a grant if the Secretary determines that substantial involvement between the Department and the recipient is necessary to carry out a collaborative project.

(5) The Secretary uses the selection procedures in this subpart to select recipients of cooperative agreements.

* * * * *

28. Section 75.216 is revised to read as follows:

§ 75.216 Applications not evaluated for funding.

The Secretary does not evaluate an application if—

(a) The applicant is not eligible;
(b) The applicant does not comply with all of the procedural rules that govern the submission of the application;

(c) The application does not contain the information required under the program; or

(d) The proposed project cannot be funded under the authorizing statute or

implementing regulations for the program.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

29. Section 75.218 is revised to read as follows:

§ 75.218 Applications not evaluated or selected for funding.

The Secretary informs an applicant if its application—

(a) Is not evaluated; or

(b) Is not selected for funding.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

30. Section 75.233 is revised to read as follows:

§ 75.233 Setting the amount of the grant.

(a) Subject to any applicable matching or cost-sharing requirements, the Secretary may fund up to 100 percent of the allowable costs in the applicant's budget.

(b) In deciding what percentage of the allowable costs to fund, the Secretary may consider any other financial resources available to the applicant.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

31. Section 75.234 is revised to read as follows:

§ 75.234 The conditions of the grant.

(a) The Secretary makes a grant to an applicant only after determining—

(1) The approved costs; and

(2) Any special conditions necessary for a high risk grantee subject to 34 CFR 74.7 or 80.12.

(b) In awarding a cooperative agreement, the Secretary includes conditions that state the explicit nature, character, and extent of anticipated Federal involvement.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

32. Section 75.235 is amended by revising paragraph (b) to read as follows:

§ 75.235 The notification of grant award.

* * * * *

(b) The notification of grant award sets the amount of the grant award and establishes other specific conditions, if any.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

33. Section 75.253 is amended by revising paragraph (a)(2), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 75.253 Continuation of a multi-year project after the first budget period.

(a) * * *

(2) The grantee has either—

(i) Made substantial progress toward meeting the objectives in its approved application; or

(ii) Obtained the Secretary's approval of changes in the project that—

(A) Do not increase the cost of the grant; and

(B) Enable the grantee to meet those objectives in succeeding budget periods;

* * * * *

(d)(1) If the Secretary decides, under this section, not to make a continuation award, the Secretary may authorize a no-cost extension of the last budget period of the grant in order to provide for the orderly closeout of the grant.

(2) If the Secretary makes a continuation award under this section—

(i) The Secretary makes the award under §§ 75.231-75.236; and

(ii) The new budget period begins on the day after the previous budget period ends.

* * * * *

34. Section 75.261 is revised to read as follows:

§ 75.261 Extension of a project period.

The Secretary may extend a project period if—(a) The extension does not violate any statute or regulations;

(b) The extension does not involve the obligation of additional Federal funds;

(c) The extension is to carry out the activities in the approved application; and

(d)(1)(i) Special or unusual circumstances would delay completion of the project;

(ii) The grantee requests an extension of the project at least 45 days before the end of the project period; and

(iii) The grantee provides a written statement before the end of the project period giving the reasons why the extension is appropriate under paragraph (d)(1)(i) of this section; or

(2) The Secretary determines that, due to special or unusual circumstances applicable to a class of grantees, the project periods for the grantees should be extended.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

35. A new § 75.262 is added to read as follows:

§ 75.262 Conversion of a grant or a cooperative agreement.

(a)(1) The Secretary may convert a grant to a cooperative agreement or a cooperative agreement to a grant at the time a continuation award is made under § 75.253.

(2) In deciding whether to convert a grant to a cooperative agreement or a cooperative agreement to a grant, the Secretary considers the factors included in § 75.200(b) (4) and (5).

(b) The Secretary and a recipient may agree at any time to convert a grant to a

cooperative agreement or a cooperative agreement to a grant, subject to the factors included in § 75.200(b) (4) and (5).

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

§ 75.510 [Removed]

36. Section 75.510 is removed.

§ 75.518 [Removed]

37. Section 75.518 is removed.

38. In § 75.534, the introductory text and paragraph (a) are revised to read as follows:

§ 75.534 Automatic increases for additional dependents.

The Secretary may increase a grant to cover the cost of additional dependents not specified in the notice of award under § 75.235 if—

(a) Allowances for dependents are authorized by the program statute and are allowable under the grant; and

39. Section 75.560(a) is revised to read as follows:

§ 75.560 General indirect cost rates; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) Institutions of higher education, at 34 CFR 74.172;

(2) Hospitals, at 34 CFR 74.173;

(3) Other nonprofit organizations, at 34 CFR 74.174;

(4) Commercial organizations, at 34 CFR 74.175; and

(5) State and local governments and Federally-recognized Indian tribal organizations, at 34 CFR 80.22.

40. Section 75.563 is revised to read as follows:

§ 75.563 Restricted indirect cost rate—programs covered.

Sections 75.564–75.568 apply to each program that has a statutory requirements not to use Federal funds to supplant non-Federal funds.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

§§ 75.580 and 75.581 [Removed]

41. Sections 75.580 and 75.581, and the center heading "COORDINATION", are removed.

42. Section 75.590 is amended by revising paragraph (c) to read as follows:

§ 75.590 Evaluation by the grantee.

(c) The effect of the project on participants being served by the project.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

43. Section 75.608 is revised to read as follows:

§ 75.608 Areas in the facilities for cultural activities.

A grantee may make reasonable provision, consistent with the other uses to be made of the facilities, for areas in the facilities that are adaptable for artistic and other cultural activities.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

44. Section 75.616 is revised to read as follows:

§ 75.616 Energy conservation.

(a) To the extent feasible, a grantee shall design and construct facilities to maximize the efficient use of energy.

(b) The following standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) are incorporated by reference in this section:

(1) ASHRAE—90 A—1980 (Sections 1–9).

(2) ASHRAE—90 B—1975 (Sections 10–11).

(3) ASHRAE—90 C—1977 (Section 12).

Note: Incorporation by reference of these provisions has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a). The incorporated document is on file at the Office of the Federal Register. These standards may be obtained from the publication sales department at the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 1791 Tullie Circle, NE., Atlanta, Georgia 30329.

(c) A grantee shall comply with ASHRAE standards listed in paragraph (b) of this section in designing and constructing facilities built with project funds.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, 42 U.S.C. 8373(b); E.O. 12185)

45. A new § 75.617 is added to read as follows:

§ 75.617 Compliance with the Coastal Barrier Resources Act.

A recipient may not use, within the Coastal Barrier Resources System, funds made available under a program administered by the Secretary for any purpose prohibited by 31 U.S.C. Chapter 55 (§§ 3501–3510).

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, 31 U.S.C. 3504, 3505)

46. Section 75.621 is amended by revising the section heading, removing

paragraph (b), and removing the paragraph designation "(a)", to read as follows:

§ 75.621 Copyright policy for grantees.

47. Section 75.622 is revised to read as follows:

§ 75.622 Definition of "project materials."

As used in §§ 75.620–75.621, "project materials" means a copyrightable work developed with funds from a grant of the Department.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

§ 75.625 [Removed]

48. Section 75.625 is removed and the cross-reference preceding this section is revised to read as follows:

Cross-Reference: See 34 CFR 74.45, Program income—royalties or equivalent income earned from patents or from inventions; and 34 CFR Part 6, INVENTIONS AND PATENTS (GENERAL).

§ 75.626 [Amended]

49. Section 75.626 is revised by removing paragraph (b) and the paragraph designation "(a)".

§ 75.681 [Amended]

50. Section 75.681 is revised by removing the cross-reference following that section.

§ 75.684 [Removed]

51. Section 75.684 is removed.

§ 75.690 [Removed]

52. Section 75.690 is removed.

53. In § 75.707, Column I, paragraph (h) in the Table is revised to read as follows:

§ 75.707 When obligations are made.

(h) A preagreement cost that was properly approved by the Secretary under the cost principles identified in 34 CFR Part 74, Subpart Q.

54. Section 75.720 is revised to read as follows:

§ 75.720 Financial and performance reports.

(a) This section applies to the reports required under 34 CFR 74.73 (Financial Status Report) and 34 CFR Part 74, Subpart J (Monitoring and Reporting of Program Performance).

(b) A grantee shall submit these reports annually, unless the Secretary allows less frequent reporting. However, the Secretary may require a grantee of a grant made under 34 CFR Part 700, 706, 707 (certain programs of the Office for Educational Research and Improvement)

to submit performance reports more often than annually.

(c) The Secretary may, under 34 CFR 74.7 (Special grant or subgrant conditions) or 34 CFR 74.72(e) (regarding grantee accounting systems), require a grantee to report more frequently than annually.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

55. Section 75.740 is amended by revising the title, designating the existing text as paragraph (a) and adding a new paragraph (b), to read as follows:

§ 75.740 Protection of and access to student records; student rights in research, experimental programs, and testing.

(b) Under most programs administered by the Secretary, research, experimentation, and testing are subject to the requirements of section 439 of GEPA and its implementing regulations at 34 CFR Part 98.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1232g, 1232h, 3474)

§§ 75.750 through 75.755 [Removed]

56. Section 75.750 through 75.755, the center heading "DATA COLLECTION BY A GRANTEE", and the cross-reference following § 75.750 are removed.

PART 76—STATE-ADMINISTERED PROGRAMS

57. The authority citation for Part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, unless otherwise noted.

§ 76.3 [Removed]

58. Section 76.3 is removed.

59. Section 76.102 is revised to read as follows:

§ 76.102 Definition of "State plan" for Part 76.

As used in this part, "State plan" means any of the following documents:

Document	Program	Authorizing statute
State plan.....	Assistance to States for Education of Handicapped Children.	Part B (except section 619), Education of the Handicapped Act (20 U.S.C. 1411-1420).
Application.....	Preschool Grants.....	Section 619, Education of the Handicapped Act (20 U.S.C. 1419).
Application.....	Handicapped Infants and Toddlers.....	Part H, Education of the Handicapped Act (20 U.S.C. 1471-1485).
State plan.....	State Vocational Education Program.....	Title I, Part B, Carl D. Perkins Vocational Education Act (20 U.S.C. 2321-2325).
State plan and application.....	State-Administered Adult Education Program.....	Section 341, Adult Education Act (20 U.S.C. 1206).
Application.....	State Student Incentive Grant Program.....	Section 415C, Higher Education Act of 1965 (20 U.S.C. 1070c-2).
Basic State plan, long-range program, and annual program.	The Library Services and Construction Act State-Administered Program.	Library Services and Construction Act (20 U.S.C. 351-355e-3).
Application/written request for assistance.	Client Assistance Program.....	Section 112, Rehabilitation Act of 1973 (29 U.S.C. 732).
Application.....	Removal of Architectural Barriers to the Handicapped Program.	Section 607, Education of the Handicapped Act (20 U.S.C. 1406).
Application.....	Emergency Immigrant Education Program.....	Emergency Immigrant Education Act (20 U.S.C. 3121-3130).
Application.....	Transition Program for Refugee Children.....	Section 412(d) Immigration and Naturalization Act (8 U.S.C. 1522 (d)).
State Application.....	State Grants for Strengthening Instruction in Mathematics and Science.	Title II, Part A, Elementary Education Act of 1965, as amended (20 U.S.C. 2981).
Application.....	Paul Douglas Teacher Scholarship Program.....	Section 553, Higher Education Act of 1965 (20 U.S.C. 1111b).
State plan.....	State Vocational Rehabilitation Services Program.	Title I, Parts A-C, Rehabilitation Act of 1973 (29 U.S.C. 720-741).
State plan supplement.....	State Supported Employment Services Program.....	Title VI, Part C, Rehabilitation Act of 1973 (29 U.S.C. 795j-795r).
State plan.....	State Independent Living Services Program.....	Title VII, Part A, Rehabilitation Act of 1973 (29 U.S.C. 796-796d).
Any document that the authorizing statute for a State-administered program requires a State to submit to receive funds.	Any State-administered program without implementing regulations.	Section 408(a)(1), General Education Provisions Act and Section 414, Department of Education Organization Act (20 U.S.C. 1221e-3(a)(1) and 3474).

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

60. The table following § 76.125 is revised to read as follows:

§ 76.125 What is the purpose of these regulations?

* * * * *

CFDA No. and name of program	Authorizing statute	Implementing regulations Title 34 CFR Part
Library Programs		
84.034 Library Services.....	Title I, Library Services and Construction Act (20 U.S.C. 351-354).	770
84.035 Interlibrary Cooperation and Resource Sharing.....	Title III, Library Services and Construction Act (20 U.S.C. 351-351f; 355e-355e-3).	770
84.154 Public Library Construction.....	Title II, Library Services and Construction Act (20 U.S.C. 351-351f; 355a-355c).	770
Postsecondary Education Programs		
84.069 State Student Incentive Grants.....	Title IV, Part A, subpart 3, Higher Education Act of 1965 (20 U.S.C. 1070c-1070c-4).	692
84.185 Robert C. Byrd Honors Scholarships.....	Title IV, Part A, subpart 6, Higher Education Act of 1965 (20 U.S.C. 1070d-31-1070d-41).	654
84.173 Paul Douglas Teacher Scholarship Program.....	Title V, Part D, subpart 1, Higher Education Act of 1965 (20 U.S.C. 1111-1111h).	653

CFDA No. and name of program	Authorizing statute	Implementing regulations Title 34 CFR Part
Vocational and Adult Education Programs		
84.002 Adult Education—State-Administered Programs	Adult Education Act, (20 U.S.C. 1201 <i>et seq.</i>)	425, 426
84.048 Vocational Education—Basic Grants to States	Title II, Carl D. Perkins Vocational Education Act (20 U.S.C. 2331-2342).	400, 401
84.049 Vocational Education—Consumer and Home-making Education.	Title III, Part B, Carl D. Perkins Vocational Education Act (20 U.S.C. 2361-2363).	400, 401
84.053 Vocational Education—State Councils.....	Section 112, Carl D. Perkins Vocational Education Act (20 U.S.C. 2322).	400, 401
84.174 Vocational Education—Community-Based Organizations.	Title III, Part A, Carl D. Perkins Vocational Education Act (20 U.S.C. 2351-2352).	400, 401
* State Vocational Education—Adult Training, Retraining, and Employment Development Program.	Title III, Part C, Carl D. Perkins Vocational Education Act (20 U.S.C. 2371-2373).	400, 401
* State Vocational Education—Comprehensive Career Guidance and Counseling Program.	Title III, Part D, Carl D. Perkins Vocational Education Act (20 U.S.C. 2381-2383).	400, 401
* State Vocational Education—Industry—Education Partnership for Training in High Technology Occupations.	Title III, Part E, Carl D. Perkins Vocational Education Act (20 U.S.C. 2391-2393).	400, 401
Education for the Handicapped Programs		
84.009 Program for Education of Handicapped Children in State Operated or Supported Schools.	Subpart 2, Part D, Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2791-2796).	302
84.027 Handicapped Preschool and School Programs—State Grant Programs.	Part B (except section 619), Education of the Handicapped Act (20 U.S.C. 1411-1418 and 1420).	300
84.027 Handicapped Preschool and School Programs—Incentive Grants.	Section 619, Education of the Handicapped Act (20 U.S.C. 1419).	301
84.155 Removal of Architectural Barriers to the Handicapped.	Section 607, Education of the Handicapped Act (20 U.S.C. 1406).	304
Other Elementary and Secondary Programs		
84.010 Educationally Deprived Children—Local Educational Agencies.	Part A, Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 <i>et seq.</i>).	200
84.011 Migrant Education Programs—State Formula Grant Program.	Subpart 1, Part D, Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2781-2783).	201
84.012 Educationally Deprived Children—State Administration.	Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 <i>et seq.</i>).	200
84.013 Educationally Deprived Children in State Administered Institutions Serving Neglected and Delinquent Children.	Subpart 3, Part D, Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2801-2804).	203
84.146 Transition Program for Refugee Children.....	Section 412(d), Immigration and Naturalization Act (8 U.S.C. 1522(d)).	538
84.151 Federal, State, and Local Partnership for Educational Improvement.	Chapter 2, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911 <i>et seq.</i>)	298
84.162 Emergency Immigrant Education Program.....	Emergency Immigrant Education Act (20 U.S.C. 3121-3130).	581
84.164 State Grants for Strengthening Instruction in Mathematics and Science.	Part A, Title II, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981-2993).	208
84.186 Drug Free Schools—State and local programs.....	Title V, Part B, Elementary and Secondary Education Act of 1965, as amended, Sections 5121-5127 (20 U.S.C. 3191-3197).	N/A

* No CFDA Number.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

61. Section 76.300 is revised to read as follows:

§ 76.300 Contact the State for procedures to follow.

The State agency that administers a program may establish procedures that

an applicant for a subgrant must follow to obtain the subgrant.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

§ 76.305 [Removed]

62. Section 76.305 is removed.

63. Section 76.401(a) is revised to read as follows:

§ 76.401 Disapproval of an application—opportunity for a hearing.

(a) *State agency hearing before disapproval.* Under the programs listed in the chart below, the State agency that administers the program shall provide an applicant with notice and an opportunity for a hearing before it may disapprove the application.

Program	Authorizing statute	Implementing regulations Title 34 CFR Part
State Grants for Strengthening Instruction in Mathematics and Science	Part A, Title II, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981-2993).	208
Assistance to States for Education of Handicapped Children.....	Part B, Education of the Handicapped Act (except Section 619) (20 U.S.C. 1411-1420).	300
Preschool Grants.....	Section 619, Education of the Handicapped Act (20 U.S.C. 1419)	301
Transition Program for Refugee Children.....	Section 412(d), Immigration and Naturalization Act (8 U.S.C. 1522(d)).....	538

Program	Authorizing statute	Implementing regulations Title 34 CFR Part
Emergency Immigrant Education Program	Emergency Immigrant Education Act (20 U.S.C. 3121-3130)	581
Financial Assistance for Construction, Reconstruction, or Renovation of Higher Education Facilities.	Section 711, Higher Education Act of 1965 (20 U.S.C. 1132b)	617

* * * * *

64. Section 76.560 is revised to read as follows:

§ 76.560 General indirect cost rates; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

- (1) Institutions of higher education, at 34 CFR 74.172;
- (2) Hospitals, at 34 CFR 74.173;
- (3) Other nonprofit organizations, at 34 CFR 74.174;
- (4) Commercial organizations, at 34 CFR 74.175; and
- (5) State and local governments and Federally-recognized Indian tribal organizations, at 34 CFR 80.22.

(b) Section 76.563 provides restrictions on indirect cost rates under certain programs.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

65. Section 76.563 is revised to read as follows:

§ 76.563 Restricted indirect cost rate—programs covered.

A State and a subgrantee shall use a restricted indirect cost rate, computed under 34 CFR 75.564-75.568, for each program that has a statutory requirement not to use Federal funds to supplant non-Federal funds.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

§§ 76.580 and 76.581 [Removed]

66. Sections 76.580 and 76.581 and the center heading "COORDINATION" are removed.

§ 76.591 [Corrected]

67. In § 76.591, "75.591" is corrected to read "76.591".

§ 76.600 [Amended]

68. In § 76.600, paragraph (a), "75.615" is revised to read "76.617".

§ 76.681 [Amended]

69. Section 76.681 is amended by removing the cross-reference following that section.

§ 76.684 [Removed]

70. Section 76.684 is removed.

§ 76.690 [Removed]

71. Section 76.690 is removed.
72. In § 76.707, Column I, paragraph (h) in the Table is revised to read as follows:

§ 76.707 When obligations are made.

(h) A preagreement cost that was properly approved by the State under the cost principles identified in 34 CFR Part 74, Subpart Q.

73. Section 76.720 is revised to read as follows:

§ 76.720 Financial and performance reports by a State.

(a) This section applies to a State's reports required under 34 CFR 74.73 (Financial Status Report) and 34 CFR Part 74, Subpart J (Monitoring and Reporting of Program Performance).

(b) A State shall submit these reports annually, unless the Secretary allows less frequent reporting.

(c) However, the Secretary may, under 34 CFR 74.7 (Special grant or subgrant conditions) or 34 CFR 74.72(e) (regarding grantee accounting systems), require a State to report more frequently than annually.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

74. Section 76.740 is amended by revising the title, designating the existing paragraph as paragraph (a) and adding a new paragraph (b), to read as follows:

§ 76.740 Protection of and access to student records; student rights in research, experimental programs, and testing.

(b) Under most programs administered by the Secretary, research, experimentation, and testing are subject to the requirements of section 439 and GEPA and its implementing regulations at 34 CFR Part 98.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1232g, 1232h, 3474)

75. Section 76.770 is revised to read as follows:

§ 76.770 A State shall have procedures to ensure compliance.

Each State shall have procedures for reviewing and approving applications for subgrants and amendments to those

applications, for providing technical assistance, for monitoring and evaluating projects, and for performing other administrative responsibilities, designed to ensure compliance with applicable statutes and regulations.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

§ 76.771 [Removed]

76. Section 76.771 is removed.

§ 76.772 [Removed]

77. Section 76.772 and the cross-reference following that section are removed.

§§ 76.780 through 76.782 [Removed]

78. The center heading preceding § 76.780 is removed and §§ 76.780-76.782 are removed.

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

79. The authority citation for Part 77 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, unless otherwise noted.

80. Paragraph (c) of § 77.1 is amended by revising the definition of "award" to read as follows:

§ 77.1 Definitions that apply to all Department programs.

(c) ***

"Award" means an amount of funds that the Department provides under a contract, grant, or cooperative agreement.

PART 237—CHRISTA MCAULIFFE FELLOWSHIP PROGRAM

81. The authority citation for Part 237 continues to read as follows:

Authority: 20 U.S.C. 1113-1113e, unless otherwise noted.

82. Section 237.2 is amended by removing "and" at the end of paragraph (a)(4), substituting "; and" for the period at the end of paragraph (b), and adding a new paragraph (c) to read as follows:

§ 237.2 Who is eligible to apply under the Christa McAuliffe Fellowship Program?

* * * * *

(c) Is eligible for a fellowship under 34 CFR 75.60.

83. Section 237.7 is amended by revising paragraph (a), to read as follows:

§ 237.7 What regulations apply?

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 and 75.61 (regarding the ineligibility of certain individuals to receive assistance) and Part 77 (Definitions that Apply to Department Regulations).

PART 263—INDIAN FELLOWSHIP PROGRAM

84. The authority citation for Part 263 is revised to read as follows:

Authority: 20 U.S.C. 3385b, unless otherwise noted.

85. Section 263.2 is amended by adding a new paragraph (d), to read as follows:

§ 263.2 Who is eligible to apply under the Indian Fellowship Program?

(d) An applicant must be eligible under 34 CFR 75.60.

86. A new § 263.10 is added to read as follows:

§ 263.10 Application contents: Evidence of eligibility under 34 CFR 75.60.

An applicant shall submit the certification required under 34 CFR 75.61.

(Authority: 20 U.S.C. 3385b)

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

87. The authority citation for Part 300 continues to read as follows:

Authority: 20 U.S.C. 1411-1420, unless otherwise noted.

88. Part 300 is amended by adding a center heading after § 300.653 and by adding new §§ 300.670-300.672, to read as follows:

Complaint Procedures of the State

§ 300.670 A State shall adopt complaint procedures.

A State shall adopt written complaint procedures for—

(a) Receiving and resolving any complaint that any public agency is violating a requirement in the Act or in this part;

(b) Reviewing an appeal from a decision of a public agency with respect to a complaint; and

(c) Conducting an independent on-site investigation of a complaint if the State determines that an on-site investigation is necessary.

(Authority: 20 U.S.C. 1412(6))

§ 300.671 Minimum complaint procedures.

A State shall include the following in its complaint procedures—

(a) A time limit of 60 calendar days after the State receives a complaint—

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(Authority: 20 U.S.C. 1412(6))

§ 300.672 An organization or individual may file a complaint.

An organization or individual may file a written signed complaint with a State. The complaint must include—

(a) A statement that a public agency has violated a requirement in the Act or in this part; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 1412(6))

PART 356—HANDICAPPED RESEARCH: RESEARCH FELLOWSHIPS

89. The authority citation for Part 356 is revised to read as follows:

Authority: 29 U.S.C. 760-762, unless otherwise noted.

90. Section 356.2 is amended by adding a new paragraph (d), to read as follows:

§ 356.2 Who is eligible for assistance under this program?

(d) An applicant for a fellowship under this program must be eligible under 34 CFR 75.60.

91. Section 356.3 is amended by removing "and" at the end of paragraph (b), removing the period at the end of paragraph (c), adding "; and" at the end of paragraph (c), and adding a new paragraph (d), to read as follows:

§ 356.3 What regulations apply to this program?

(d) The regulations in 34 CFR 75.60-75.61 (regarding the ineligibility of certain individuals to receive assistance).

PART 562—BILINGUAL EDUCATION: FELLOWSHIP PROGRAM

92. The authority citation for Part 562 is revised to read as follows:

Authority: 20 U.S.C. 3221-3262, unless otherwise noted.)

93. Section 562.2 is amended by removing "and" after the semicolon in paragraph (b)(1)(iii), substituting "; and" for the period at the end of paragraph (b)(2), and adding a new paragraph (b)(3) to read as follows:

§ 562.2 Who is eligible to apply for assistance under the fellowship program?

(3) Is eligible for a fellowship under 34 CFR 75.60.

94. Section 562.3 is amended by adding a new paragraph (c), to read as follows:

§ 562.3 What regulations apply to the Fellowship Program?

(c) The regulations in 34 CFR 75.60-75.62 (regarding the ineligibility of certain individuals to receive assistance).

PART 630—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

95. The authority citation for Part 630 is revised to read as follows:

Authority: 20 U.S.C. 1135, *et seq.*, unless otherwise noted.

96. Section 630.11 is amended by revising the parenthetical phrase in the introductory text to read as follows:

§ 630.11 Types of competitions.

(See § 630.22)

97. New §§ 630.22 and 630.23 are added to read as follows:

§ 630.22 Preapplications.

The Secretary considers a preapplication under the procedures in §§ 630.21 and 630.23.

(Authority: 20 U.S.C. 1135)

§ 630.23 Consideration of a preapplication.

(a) The Secretary considers a preapplication if—

(1) The applicant complies with the procedural rules that govern submission of the preapplication; and

(2) The preapplication is submitted in response to an application notice that requires preapplications.

Cross-Reference: See Subpart N of 34 CFR Part 74.

(b) If the Secretary requires preapplications and an applicant does not preapply, the applicant may not apply for a grant.

(c) If an applicant submits a preapplication, the Secretary—

(1) Informs the applicant that it is eligible and encourages it to apply for a grant;

(2) Informs the applicant that it is eligible but does not encourage it to apply for a grant; or

(3) Informs the applicant that it is ineligible for assistance, and explains why the applicant is ineligible.

(d) An applicant may apply for a grant if the Secretary does not encourage it to apply.

(Authority: 20 U.S.C. 1135)

PART 653—PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

98. The authority citation for Part 653 continues to read as follows:

Authority: 20 U.S.C. 1111-1111h, unless otherwise noted.

99. Section 653.2 is amended by adding a new paragraph (c), to read as follows:

§ 653.2 Who is eligible to participate in this program?

* * * * *

(c) A high school graduate who applies for a scholarship under this program must be eligible under 34 CFR 75.60.

* * * * *

§ 653.3 [Amended]

100. Section 653.3 is amended by adding "§§ 75.60-75.62 (regarding the ineligibility of certain individuals to receive assistance)," after "(Administration of Grants)," in paragraph (b).

PART 762—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT FELLOWS PROGRAM

101. The authority citation for Part 762 continues to read as follows:

Authority: 20 U.S.C. 1221e, unless otherwise noted.

102. Section 762.2 is amended by adding a new paragraph (d), to read as follows:

§ 762.2 Who is eligible for fellowship?

(d) An individual who applies for a fellowship under the program must be eligible under 34 CFR 75.60.

* * * * *

103. Section 762.4 is amended by designating the existing text paragraph (a) and adding a new paragraph (b), to read as follows:

§ 762.4 What regulations apply?

* * * * *

(b) The regulations in 34 CFR 75.60-75.61 (regarding the ineligibility of certain individuals to receive assistance) also apply to this program.

* * * * *

[FR Doc. 88-18657 Filed 8-17-88; 8:45]

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Test Report Federal Register

Thursday
August 18, 1988

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 15

Indemnification of Publishers of Aeronautical Charts and Maps; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 15**

[Docket No. 25673; Notice No. 88-13]

Indemnification of Publishers of Aeronautical Charts and Maps**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document proposes regulations to implement a recent amendment to the Federal Aviation Act of 1958 (FAA ACT), as amended, which provides for the execution of indemnity agreements between the United States and publishers of aeronautical charts or maps in the event the publisher is liable for tort damages arising out of such charts or maps. These regulations are necessary to implement this new provision, to facilitate the presentation of claims for indemnity, and to establish the standards by which they will be reviewed.

DATE: Comments must be received on or before October 3, 1988.

ADDRESSES: Comments on this proposal are to be marked "Docket No. 25673" and mailed in duplicate to: Federal Aviation Administration: Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25673, 800 Independence Ave. SW., Washington, DC 20591; or deliver comments in duplicate to: Room 916, 800 Independence Ave. SW., Washington, DC. Comments may be inspected in Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel, Litigation Division, AGC-400, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591. Telephone: (202) 267-3361.

SUPPLEMENTAL INFORMATION:**Comments Invited**

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to any significant environmental or economic impact that might result because of the adoption of these proposals may also be submitted. Communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed

in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A reporting summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge the receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Docket No. 25673." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Ave. SW., Washington, DC, or by calling (202) 267-3484. Each communication must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On December 19, 1985, Congress amended the Federal Aviation Act of 1958 by adding a new section 1118, 49 U.S.C. 1519, entitled "Aeronautical Charts and Maps". This section provides for the execution of indemnity agreements between the United States and publishers of aeronautical charts or maps. Specifically, indemnity may be available to the publisher if the publisher is liable on a claim for damages arising out of the depiction on a chart or map of any defective or deficient flight procedure, if this procedure was promulgated by the Federal Aviation Administration and was accurately depicted on the chart or map.

Indemnity is only available if the defect in the chart or map was in the information provided by the FAA, and was not obviously defective or deficient so that the error should have been perceived by the publisher. In addition, the flight procedure in question must have been depicted exactly as designed by the Government. The FAA will not agree to indemnity on any claims which do not arise out of a defect or deficiency in the procedure. A "defective or deficient" flight procedure includes any defect in the design, as well as the FAA's inclusion or omission of any

feature which makes the flight procedure inherently hazardous, and the failure of the flight procedure to comply with applicable FAA standards. For purposes of agreements under section 1118 of the FA Act, the determination that a flight procedure is "defective or deficient" can only be made by the FAA itself, or by a court of competent jurisdiction.

The proposed regulations prescribe the procedures to be followed by any publisher of an aeronautical chart or map who is or may be subject to tort liability arising out of the publication of that chart or map. "Publisher" does not include any state agency or public entity, and claims by such parties shall not be considered. Claims shall be filed with the Chief Counsel of the Federal Aviation Administration, Litigation Division, 800 Independence Ave. SW., Washington, DC 20591, and must be presented to that office within 30 days of the publisher's receipt of service of a complaint in any proceeding in which it appears that indemnity may be available under section 1118 of the Act.

After review of the publisher's claim, the FAA would determine whether an agreement to indemnify is appropriate. Until the FAA determines that an indemnity agreement is appropriate, the publisher must provide the FAA with any and all information requested, and it must in good faith defend the action against it. Failure on the part of the publisher to cooperate with the FAA, or to have conducted a full and good faith defense of the action, would be grounds for the Government to refuse to indemnify the publisher for any liability.

No indemnity is available for cases in which the underlying cause of action against the publisher arose before December 19, 1985. With respect to actions arising on or after December 19, 1985, but before the effective date of these regulations, the publisher must notify the FAA within 30 days of the adoption of these regulations of any such action and the basis for claiming indemnity, in accordance with the above procedure.

A publisher who chooses to settle an action rather than defend it to judgment must also notify the FAA of its proposed settlement agreement, and submit the terms of the agreement for FAA review prior to execution of the agreement. The FAA shall have 60 days to review the proposed settlement, and if it does not concur with the terms, or does not agree that the facts of the case require or justify indemnity by the Government, no indemnity shall be available. Similarly, the publisher must provide prompt notice, within 5 days, of any judgment

rendered against it along with its claim for indemnity. The FAA shall have the option of directing the publisher to appeal any adverse verdict as a condition of the FAA agreeing to indemnity. If the FAA is satisfied that both the facts of the case and the defense of the action by the publisher justify indemnity, and if all of the requirements of this regulation have been complied with, the FAA will enter into an indemnity agreement with the publisher.

The funds for satisfaction of any indemnity agreement between the FAA and a publisher shall be appropriated by an act of Congress, at the request of the FAA. Indemnity will not include interest on the judgment, punitive damages, exemplary damages, civil or criminal fines, any other litigation sanctions, costs, or any other incidental expenses. Indemnity for attorneys' fees will only be available for costs of appeal, if the appeal is made at the direction of or with the concurrence of the FAA.

Regulatory Evaluation

Analysis of Benefits and Costs

The FAA has estimated the costs and benefits associated with this NPRM by analyzing it section by section.

These regulations would implement section 1118 of the Federal Aviation Act, which requires the United States Government to enter into agreements under certain specified conditions to indemnify applicable persons from claims arising from depictions on aeronautical charts or maps. The FAA's responsibility in this regard is to devise and promulgate a set of procedures to implement these agreements.

Each section of this NPRM would implement the statutory mandate of section 1118 and the stated intent of Congress that the implementing regulations shall protect the Government's legitimate financial and litigation interests in entering into such agreements. Accordingly, neither any costs nor benefits would derive directly from these implementing regulations. Furthermore, the financial impact of section 1118 is essentially a transfer of funds with respect to appropriate conditions of liability and fault under the law, and would not yield any financial cost or benefit upon society. Each regulation of proposed Part 15, Subpart B, is identified and explained in the detailed section by section analysis presented in Appendix A of the full Regulatory Evaluation placed in the Docket.

Regulatory Flexibility Determination

Since there is little or no cost associated with any of the proposed amendments, the FAA has determined that the proposed amendments contained in this NPRM will not have a significant economic impact on a substantial number of small entities.

Trade Impact Statement

Since this proposed Part would apply only to private publishers of aeronautical charts or maps and to the Federal Aviation Administration regarding claims for indemnity under conditions described in these proposed regulations, the Federal Aviation Administration has determined that these regulations will not have an impact on international trade.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which has been construed to preempt state laws regulating the same subject. Therefore, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

These proposed regulations will implement Congress' intent in enacting new section 1118 of the FA Act. They establish the procedures for obtaining indemnity, as well as clarifying the conditions which must be met by any publisher seeking indemnity. The proposed regulations require early notification of the FAA by a publisher as to lawsuits filed against it, in order that it may make an early assessment of the potential for liability for indemnity. By providing for early notice, both the publisher and the Government can cooperate more efficiently in the defense of the case. For reasons discussed under "Regulatory Evaluation", this proposed rule is not a "major rule" under Executive Order 12291; and it is not considered a significant rulemaking under D.O.T. Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 15

Aeronautical charts, Administrative claims, Indemnification procedures, Aircraft accident investigation information.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 15 of the Federal Aviation Regulations (14 CFR Part 15) as follows:

PART 15—ADMINISTRATIVE TORT CLAIMS UNDER FEDERAL TORT CLAIMS

1. The authority citation for Part 15 is revised to read as follows:

Authority: 49 U.S.C. 1354; 49 U.S.C. APP. 1519; 5 U.S.C. 301; 28 U.S.C. 2672, 2675; 49 U.S.C. 106(g)

(Revised, Pub. L. 97-449, Jan. 12, 1983).

§§ 15.1-15.9 [Designated as Subpart A]

2. 14 CFR 15.1 through 15.9 are designated as Subpart A—General Procedures.

3. A new Subpart B is added to read as follows:

Subpart B—Indemnity Agreements Under Section 1118 of the Federal Aviation Act

Sec.

- 15.10 Applicability.
- 15.11 Exclusions.
- 15.12 Claim; who may file; location of filing
- 15.13 Notification requirements.
- 15.14 Conduct of the action.
- 15.15 Settlements.
- 15.16 Judgments.
- 15.17 Payment on claims.

Subpart B—Indemnity Agreements Under Section 1118 of the Federal Aviation Act

§ 15.10 Applicability.

This subpart prescribes procedural requirements whereby private publishers of aeronautical charts or maps may claim indemnity from the United States under section 1118 of the Federal Aviation Act of 1958, as amended, for claims arising out of the publisher's accurate depiction on such chart of any defective or deficient FAA flight procedure or airway, under the conditions described in this part.

§ 15.11 Exclusions.

No payment for indemnity under section 1118 shall be made on a claim:

- (a) In which the underlying cause of action against the publisher arose prior to December 19, 1985; or
- (b) By a state agency or public entity.

§ 15.12 Claim; who may file; location of filing.

A claim for indemnity under this part may be filed by the publisher of the chart in question, his duly authorized agent, or legal representative. The claim shall be filed with the Chief Counsel of the FAA, 800 Independence Ave. SW., Washington, DC 20591.

§ 15.13 Notification requirements.

A claim for indemnity shall not be considered by the FAA unless:

(a) The publisher notifies the Chief Counsel of the FAA, within the time limits described in paragraph (a) or (b) of this section, of the publisher's receipt of service of a complaint in any proceeding, federal or state, in which it appears that indemnity under section 1118 may be appropriate. The notice shall be accompanied by a description of the basis on which the publisher asserts that indemnity under section 1118 is appropriate.

(b) For claims in which the underlying cause of action against the publisher arose on or after December 19, 1985, and prior to the effective date of this subpart, the notice described in paragraph (a) of this section is received within 30 days of the effective date of this subpart.

(c) For claims in which the underlying cause of action against the publisher arose on or after the effective date of this subpart, the notice described in paragraph (a) of this section is received within 30 days of the publisher's receipt of service of the complaint.

§ 15.14 Conduct of the action.

(a) The publisher shall act in good faith to defend any claim or action against it that is or could become the subject of a notification described in § 15.13(a) of this part.

(b) Upon receipt of the notification described in § 15.13 of this part, the FAA, if it determines that indemnity under section 1118 is appropriate, may require the publisher, as a condition of indemnity, to implead the United States as a third-party defendant in the action, and arrange for the removal of the action to Federal Court if necessary. The publisher shall also agree to cooperate in the defense of the action with the

United States, and shall promptly provide any additional information requested by the United States.

(c) If the FAA determines that the claim is one which will not require indemnity under section 1118, it shall so notify the publisher by registered mail, within 60 days of receiving either the notification or any requested additional information as described in this section, whichever is later.

§ 15.15 Settlements.

(a) Prior to settlement of a claim or an action by a publisher with another party, for which the publisher has sought, or intends to seek indemnity under section 1118, the publisher shall submit a copy of the terms of the proposed settlement to the Chief Counsel of the FAA along with a statement of its justification for the proposed settlement. The Administrator shall have 60 days to consider the proposed settlement. If the Chief Counsel does not concur with the proposed settlement terms, or does not concur that the claim is one which will require indemnity under section 1118, he shall so notify the publisher, by registered mail.

(b) In making this determination, the Chief Counsel may request the publisher to provide additional information, and will also consider whether the publisher has conducted a good faith defense of the action, and whether the proposed settlement appears to have been negotiated in good faith by the publisher. No indemnity will be available if the Chief Counsel determines that either of these conditions are not satisfied.

(c) The Chief Counsel will not approve payment on claims concerning a depiction or publication which he determines

(1) Was inaccurate within the meaning of section 1118; or

(2) Was obviously defective or deficient, within the meaning of section 1118; or

(3) Did not comply with the applicable regulatory procedure concerning that chart, map, or flight procedure.

§ 15.16 Judgments.

Within 5 days of the rendering of a judgment against the publisher in any proceeding, or within 30 days of the denial of an appeal, whichever is later, the publisher shall notify the Chief Counsel of its claim for indemnity with respect to the judgment. The Chief Counsel shall have 30 days to review the merits of the claim for indemnity. If the Chief Counsel determines that the claim does not satisfy the requirements of section 1118, he shall so inform the publisher, by registered mail. In making this determination, the Administrator will also consider whether the publisher conducted a good faith defense of the action.

§ 15.17 Payment on claims.

(a) *Source of funds.* If the Chief Counsel finds that the claim satisfies the requirements of section 1118, the FAA shall prepare an indemnity agreement concerning the claim, which shall be signed by the Chief Counsel and the publisher. The FAA shall then submit a request for an appropriation to Congress for funds to satisfy the claim. Payment shall not be effected until an appropriation is passed by Congress, and shall be made directly from the appropriated funds.

(b) *Provisions of the indemnity agreement.* The Government shall not indemnify the claimant for any punitive or exemplary damages, civil or criminal fines or any other litigation sanctions, interest on the judgment, costs, attorneys' fees, or other incidental expenses. However, the FAA will agree to indemnify for reasonable costs of appeal, including attorneys' fees, if the appeal is made at the direction of or with the concurrence of the FAA. No payment shall be recommended unless the indemnity agreement provides that the Government shall be subrogated to all claims, including third-party claims, cross-claims, and counterclaims, of the publisher.

Issued in Washington, DC on August 8, 1988.

T. Allan McArtor,
Administrator

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Federal Register

**Thursday
August 18, 1988**

Part VIII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

**Migratory Bird Hunting; Final Migratory
Bird Hunting Regulations on Certain
Federal Indian Reservations and Ceded
Lands; Final Rule**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special migratory bird hunting regulations to be established for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This season begins as early as September 1. This rule also makes final the guidelines employed to establish the special regulations.

EFFECTIVE DATE: This rule takes effect on September 1, 1988.

ADDRESSES: Comments received on the proposed special hunting regulations and tribal proposals are available for public inspection during normal business hours in Room 536, 1717 H Street, NW., Washington, DC. Communications regarding the documents should be addressed to: Director (FWS/MBMO), Room 536, Matomic Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the July 22, 1988 Federal Register (53 FR 27728), the U.S. Fish and Wildlife Service (hereinafter the Service) proposed special migratory bird hunting regulations for the 1988-89 hunting season for certain Indian tribes, under the interim guidelines described in the June 4, 1988 Federal Register (at 50 FR 23467). The guidelines were developed in response to tribal requests for Service

recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10-September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. Tribes that desired special hunting regulations in the 1988-89 hunting season were requested in the January 21, 1988 Federal Register (53 FR 1645) to submit a proposal that included details on: (1) Requested season dates and other regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations. No action is required if a tribe wishes to observe the hunting regulations that are established by the State(s) in which an Indian reservation is located. The guidelines have been used successfully since the 1985-86 hunting season, and they are made final in this document, as was proposed in the July 22, 1988 Federal Register (53 FR 27728).

In the July 22, 1988 proposed rule, the Service pointed out that duck hunting regulations for the upcoming season likely would be more restrictive than in the 1987-88 hunting season because of a reduced fall flight caused by drought. Recently completed surveys on the breeding ground have confirmed the expected decline. Although duck hunting regulations not have been established yet for the late season, they can be expected to be much more restrictive than last year.

Comments and Issues Concerning Tribal Proposals

Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

In an August 8, 1988, letter, C.D. Besadny, Secretary, Wisconsin Department of Natural Resources, commented on the proposed 1988-89 migratory bird hunting regulations for Chippewa Indians on ceded lands in the State. Among other things, Mr. Besadny requested that the opening of the duck season be delayed one week (from September 19 to September 26), that the Canada goose season open on the same date as the duck season, and that the special scaup-only season be cancelled. In the July 22, 1988 Federal Register (53 FR 27728), the Service pointed out that the fall flight of ducks would be much lower than usual this year, and indicated that, for conservation purposes, duck harvest should be reduced. The Great Lakes Indian Fish and Wildlife Commission agreed with this request, and on August 9, 1988, notified the Service that a September 26 opening of the duck season was acceptable to the tribes. The delayed opening also will apply to coots and moorhen, and the special scaup-only season is suspended. The September 19 opening for Canada geese will proceed as proposed, with certain safeguards in place at Wisconsin's Powell Marsh.

As noted in the July 22, 1988 proposed rule, Michigan did not object to the special regulations on ceded lands in the State. However, as was the case last year, Minnesota continues to oppose special regulations for hunting by Chippewa Indians on ceded lands in the State. The Service recognizes Minnesota's concerns but for the reasons discussed in the July 22, 1988 proposed rule, believes that continued carefully regulated seasons for Chippewa Tribal members are appropriate in Minnesota, as well as in Michigan and Wisconsin. Therefore, special regulations for the 1988-89 hunting season are made final in this rule. The regulations take into account the need to reduce the harvest of ducks, and as in the past, the Great Lakes Indian Fish and Wildlife Commission will conduct a survey to monitor the migratory bird harvest by tribal members.

Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana

The Confederated Salish and Kootenai Tribes and the Montana Department of Fish, Wildlife and Parks are continuing the negotiations

discussed in the July 22, 1988 Federal Register (53 FR 27728). The Service notes, however, that there is no disagreement over the waterfowl hunting regulations requested by the tribes for the 1988-89 season, and they are made final in this rule.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES-75-74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the Federal Register on June 13, 1975 (40 FR 25241). A supplement to the final environmental statement "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS) 88-14" was filed on June 9, 1988, and notice of availability was published in the Federal Register on June 16, 1988 (53 FR 22582) and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Nontoxic Shot Regulations

On December 14, 1987 (at 52 FR 47428), the Service proposed nontoxic shot zones for the 1988-89 waterfowl hunting season. This proposed rule was sent to all affected tribes and to Indian organizations for comment. The final rule on nontoxic shot zones for the 1988-89 hunting season was published on June 28, 1988 in the Federal Register (53 FR 24284). All of the hunting regulations covered by this final rule are in compliance with the Service's nontoxic shot restrictions.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and shall) "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *." Consequently, the Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season on Federal Indian reservations and ceded lands.

On August 8, 1988, the Division of Endangered Species and Habitat Conservation notified the Office of

Migratory Bird Management of its concurrence with the finding that the proposed action will not affect any listed species or any critical habitat.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the March 9, 1988 Federal Register (53 FR 7702), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240. These regulations contain no collection of information subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the Federal Register dated August 9, 1988 (53 FR 29897).

Authorship

The primary author of this final rule is Fant W. Martin, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed hunting regulations for certain tribes were published on July 22, 1988, the Service established the longest period possible for public comments. In doing this, the Service recognized that time would be of the essence. The comment period provided the maximum amount of time possible while ensuring that a final rule was published before the beginning of the hunting season on September 1, 1988.

Therefore, under the authority of the Migratory Bird Treaty Act of July 3,

1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), the Service prescribes final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds other than waterfowl. However, final Federal frameworks for the waterfowl hunting season (opening and closing framework dates, daily bag and possession limits, etc.) are planned for publication on September 13, 1988. Because it was necessary to publish this document by September 1, 1988 most waterfowl regulations for the tribes listed here are shown as "within final Federal frameworks to be established."

Therefore, for the reasons set out above, the Service finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this final rule, therefore, will take effect on September 1, 1988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, 50 CFR Part 20 is amended as follows:

For the reasons set out in the preamble, Title 50, Chapter I, Subchapter B, Part 20, Subpart K, is amended as set forth below.

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act sec. 3, Pub. L. 65-186, 40 Stat. 755 (16 U.S.C. 701-708h); sec. 3(h), Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712).

(Editorial Note.—The following annual hunting regulations provided for by § 20.110 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature).

2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nonmembers).

(1) Ducks (including Mergansers). Season Dates: Earliest opening date and longest season permitted Pacific Flyway States under final Federal frameworks to be announced.

Daily bag and possession limits: Same as permitted Pacific Flyway States

under final Federal frameworks to be announced.

(2) *Goose Season Closed on All Species.*

(3) *General Conditions:* Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Jicarilla Apache Tribe also apply on the reservation.

(b) *Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers).*

(1) *Ducks (including Mergansers).*

Season Dates: Earliest opening date and longest permitted Pacific Flyway States under final Federal frameworks to be announced.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(2) *Canada Geese (Season closed on other geese).*

Season Dates: December 17–January 8.

Daily Bag and Possession Limits: 2 daily. Possession limit 4.

(3) *Coots and Common Moorhens (Gallinule).*

Season Dates: Same as for ducks.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(4) *Common Snipe.*

Season Dates: Same as for ducks.

Daily Bag and Possession Limits: 8 daily. Possession limit 16.

(5) *Band-tailed Pigeons.*

Season Dates: September 1–September 30.

Daily Bag and Possession Limits: 5 daily. Possession limit 10.

(6) *Mourning Doves and White-winged Doves.*

Season Dates: September 1–September 30.

Daily Bag and Possession Limits: 10 mourning and white-wing doves daily in the aggregate, of which no more than 6 may be white-winged doves.

Possession limit after opening day is 20 mourning and white-winged doves in the aggregate, of which no more than 12 may be white-winged doves.

(7) *General Conditions:* Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16

years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(c) *Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Members Only).*

(1) *Ducks (including Mergansers).*

Season Length and Dates: Begin continuous season on October 8, with longest season permitted Pacific Flyway States under final Federal frameworks to be announced.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(2) *Geese (Canada, Blue, Snow, Ross', White-fronted):*

Season Length and Dates: Begin continuous season on October 8, with longest season permitted Idaho under final Federal frameworks to be announced.

Daily Bag and Possession Limits: Same as permitted Idaho under final Federal frameworks to be announced.

(3) *Common Snipe.*

Season Length and Dates: Same as for ducks.

Daily Bag and Possession Limits: 8 daily. Possession limit 16.

(4) *General Conditions:* Nontribal members will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(d) *Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nonmembers).*

(1) *Ducks (including Mergansers).*

Season Length and Dates: Latest closing date and longest season permitted Pacific Flyway States under final Federal frameworks to be announced.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(2) *Geese (Canada, Blue, Snow, Ross', White-fronted).*

Season Length and Dates: Latest closing date and longest season permitted Arizona under final Federal frameworks to be announced.

Daily Bag and Possession Limits: Same as permitted Arizona under final Federal frameworks to be announced.

(3) *Coots and Common Moorhens (Gallinule).*

Season Dates: Same as for ducks.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

(4) *Common Snipe.*

Season Length and Dates: Same as for ducks.

Daily Bag and Possession Limits: 8 daily. Possession limit 16.

(5) *Mourning Doves.*

Season Length and Dates: September 1–11 and November 21–January 8.

Daily Bag and Possession Limits: September 1–11: Daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. Possession limit is 20, of which no more than 12 may be white-winged doves. November 21–January 8: 10 mourning doves only daily. Possession limit 20.

(6) *White-winged Doves.*

Season Dates: September 1–11.

Daily Bag and Possession Limits: 6 daily. Possession limit 12.

(7) *Band-tailed Pigeons.*

Season Dates: October 7–November 5.

Daily Bag and Possession Limits: 5 daily. Possession limit 10.

(8) *General Conditions:* Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the White Mountain Apache Tribe also apply on the reservation.

(e) *Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nonmembers).*

(1) *Ducks (including Mergansers).*

Season Length and Dates: Same as Colorado River Zone in California.

Daily Bag and Possession Limits: Same as Colorado River Zone in California.

(2) *Geese (Canada, Blue, Snow, Ross', White-fronted).*

Season Length and Dates: Same as Colorado River Zone in California.

Daily Bag and Possession Limits: Same as Colorado River Zone in California.

(3) *Coots and Common Moorhens (Gallinule).*

Season Dates: Same as for ducks in Colorado River Zone in California.

Daily Bag and Possession Limits: Same as Colorado River Zone in California.

(4) *Common Snipe.*

Season Length and Dates: Same as for ducks in Colorado River Zone in California.

Daily Bag and Possession Limits: 8 daily. Possession limit 16.

(5) *Mourning Doves and White-winged Doves.*

Season Length and Dates: Same as Colorado River Zone in California.

Daily Bag and Possession Limits: Daily bag limit is 10 and possession limit is 20, singly or in the aggregate of the two species.

(6) *General Conditions:* Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Colorado River Indian Tribes also apply on the reservation.

(f) *Penobscot Indian Nation, Old Town, Maine* (Tribal Members and Nonmembers).

(1) *Ducks:* Same species, season dates, season length, and daily bag and possession limits as regular duck season in Maine.

(2) *Geese:* Same species, season dates, season length, and daily bag and possession limits as regular goose season in Maine.

(3) *General Conditions:* (i) Tribal members may hunt waterfowl (ducks and geese) on Penobscot Indian Territory under special sustenance regulations during the 1988-89 hunting season. Sustenance season dates are September 17-November 30. The daily bag limit in the sustenance season is 4 ducks, including no more than 1 black duck and 2 wood ducks. The daily bag limit for geese is 3 Canada geese, 3 snow geese, or 3 in the aggregate. When the sustenance and Maine's general waterfowl season overlap, the daily bag limit for tribal members is only the larger of the two daily bag limits.

(ii) Possession limits on ducks and geese during the tribal sustenance season are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's residence.

(iii) Tribal members shall comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking, except during the sustenance season, tribal members shall be permitted to hunt one-half hour before sunrise to one-half hour after sunset.

(iv) Each tribal and nontribal waterfowl hunter 16 years of age or over must possess and carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp), signed in ink across the face.

(v) Nontribal members hunting waterfowl on Penobscot Indian Territory shall comply with all Federal and State hunting regulations. Special regulations established by the Penobscot Indian Nation also apply on Penobscot Indian Territory.

(g) *Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin* (Tribal Members Only).

(1) *Ducks (including Mergansers).*

Wisconsin and Minnesota Zones:

Season Dates: Begin September 26. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: Same as permitted Wisconsin under final Federal frameworks to be announced.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

(2) *Canada Geese.*

Wisconsin and Minnesota Zones:

Season Dates: Begin September 19. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: 3 daily. Possession limit 6.

Michigan Zone:

Season Dates: Same opening date and season length permitted Michigan under final Federal frameworks to be announced.

Daily Bag and Possession Limits: 3 daily. Possession limit 6.

(3) *Other Geese (Blue, Snow, and White-fronted).*

Wisconsin and Minnesota Zones:

Season Dates: Begin September 19. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: Same as permitted Wisconsin under final Federal frameworks to be announced.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final frameworks to be announced.

(4) *Coots and Common Moorhens (Gallinule).*

Wisconsin and Minnesota Zones:

Season Dates: Begin September 26. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: 20 daily, singly or in the aggregate. Possession limit 40.

Michigan Zone: Same dates, season length, and daily bag and possession

limits permitted Michigan under final Federal frameworks to be announced.

(5) *Sora and Virginia Rails.*

Wisconsin and Minnesota Zones:

Season Dates: Begin September 19. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: 25 daily, singly or in the aggregate. Possession limit 25.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

(6) *Common Snipe.* Wisconsin and Minnesota Zones:

Season Dates: Begin September 19. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: 8 daily. Possession limit 16.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

(7) *Woodcock.*

Wisconsin and Minnesota Zones:

Season Dates: September 10-November 14.

Daily Bag and Possession Limits: 5 daily. Possession limit 10.

Michigan Zone:

Season Dates: September 15-November 14.

Daily Bag and Possession Limits: 5 daily. Possession limit 10.

(8) *General Conditions:* (i) While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit. (ii) Tribal members will comply with all basic Federal migratory bird hunting regulations, 50 CFR Part 20, and shooting hour regulations, 50 CFR part 20, Subpart K. If shooting hours are changed during the late season, tribal members will observe the new shooting hours after the late season begins in the affected States. Prior to the opening of the late season, however, tribal members may hunt migratory birds from one-half hour before sunrise to sunset.

(iii) Nontoxic shot will be required for all off-reservation hunting by tribal members of waterfowl, coots, moorhens, and gallinules.

(iv) Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

(v) *Wisconsin Zone.* Tribal members will comply with NR 10.09 (1)(a) (2) and (3), Wis. Adm. Code (shotshells), sec. NR 10.12 (1)(C), Wis. Adm. Code (shooting from structures), sec. NR 10.12 (1)(g), Wis. Adm. Code (decoys), and sec. 29.27 Wis. Stats. (duck blinds). The Canada goose season at Powell Marsh

will begin on September 19. A tribal quota of 25 Canada geese will be in effect until September 25, or until daily censuses by Great Lakes Indian Fish and Wildlife Commission or Wisconsin Department of Natural Resources employees indicate that at least 300 Canada geese are in the area, whichever comes first. If the tribal quota is reached before September 25 or before 300 Canada geese are present, Powell Marsh will be closed to tribal hunting until September 25. Thereafter, the tribal season will resume without a quota and with a daily bag limit of 3 Canada geese.

(vi) *Minnesota Zone.* Tribal members will comply with M.S. 100.29, Subd. 18 (duck blinds and decoys).

(vii) Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State

conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with sec. NR 19.12, Wis. Adm. Code. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(h) *Flathead Indian Reservation, Pablo, Montana* (Nontribal Members Only).

(1) *Ducks (including Mergansers):* Same species, season dates, season length, and daily bag and possession limits as permitted Pacific Flyway portion of Montana under final Federal frameworks to be announced.

(2) *Geese:* Same species, season dates, season length, and daily bag and possession limits as permitted Pacific Flyway portion of Montana under final Federal frameworks to be announced.

Special Exception for Geese: A special early closure for all goose hunting will begin at sunset, November 30, 1988, within the following area: Those portions of Flathead, Lake, and Sanders counties beginning at Ravalli, thence north along U.S. Highway 93 to

Polson and Elmo, thence West and South on State Highway 28 to the junction of State Highway 382 near Hot Springs, and South along said highway to Perma, thence east along State Highway 200 to Ravalli, the point of origin.

(3) *General Conditions:* Nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp), signed in ink across the face. Special regulations established by the Confederated Salish and Kootenai tribes also may apply on the reservation.

Date: August 15, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-18769 Filed 8-17-88; 8:45 am]

BILLING CODE 4310-55-M

Test Report Federal Project

Thursday
August 18, 1988

Part IX

Department of Energy

Bonneville Power Administration

Proposed Model Conservation Standards
Surcharge Policy Extension; Notice and
Request for Comments

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Model Conservation Standards Surcharge Policy Extension

AGENCY: Bonneville Power Administration (Bonneville or BPA), DOE.

ACTION: Notice of Proposed Model Conservation Standards (MCS) Surcharge Policy Extension and Request for Comment.

SUMMARY: Bonneville is releasing the proposed MCS Surcharge Policy Extension. The policy is designed to implement the recommendations made by the Northwest Power Planning Council (Council). The Council's recommendations are contained in their document titled "Model Conservation Standards for New Residential and Commercial Construction," issued on January 30, 1987, and published in the *Federal Register* on March 26, 1987. In accordance with the Pacific Northwest Power Act, the Council developed MCS and recommended to the Bonneville Administrator that a surcharge be imposed on those portions of a customer's loads within the region that are not covered by a Bonneville MCS Program or other conservation measures which achieve savings comparable to those programs. The Administrator's policy to implement those recommendations was issued in August 1987. That Policy described how the Policy would be applied, how utility plans would be evaluated, the calculation and collection of a surcharge, and seven ways that a utility can avoid a surcharge. Also contained in the Policy were summaries of the Policy's purposes, its statutory direction, and past and present surcharge activities.

This proposed extension of the current Policy would continue the current efforts to encourage regionwide movement towards MCS savings and help encourage the adoption of building codes at MCS levels across the region. To provide some stability in those efforts, Bonneville is proposing to extend the current Policy rather than undertake at this time a major revision of the current Policy. The proposed extension contains the same goals, requirements, and evaluation standards of the current Policy. Finally, those sections of the Policy which contain the words "No Changes" are wholly consistent with the corresponding section of the current Policy. Otherwise, changes are contained within brackets.

Bonneville is seeking comments only on those portions of the existing policy which have been changed. Other issues related to the surcharge policy will not be considered at this time.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212, by September 16, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Ann C. Scott, Public Involvement Manager, Public Involvement office, at the address listed above, 503-230-3478. Oregon callers outside of Portland may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59807, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98807, 509-662-4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Ave., Suite 400, Seattle, Washington 98109-1030, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6225.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

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Note.—If a section heading includes the words "NO CHANGES," the content of that section is the same as the current surcharge Policy. Otherwise, changes are contained within brackets.

I. Background of Policy**A. Introduction**

The Surcharge Policy responds to recommendations made by the Northwest Power Planning Council (Council) in its 1986 Northwest Conservation and Electric Power Plan (Plan) and its Model Conservation Standards (MCS) for New Residential and Commercial Construction (Plan Amendment). The purpose of this policy is to encourage utilities to achieve additional electrical savings through improved residential and commercial building construction which can ultimately result in regionwide adoption of the Council's MCS in codes. There are two additional policy objectives:

1. To identify what criteria will be used to evaluate a utility's proposed approach to achieving MCS level electrical savings; and
2. To identify how a surcharge would be calculated and collected.

As the Council states in its Plan Amendment, "By the end of 1989, the Council expects the region to achieve residential sector savings equivalent to at least 85 percent of those that would be achieved with full implementation of the MCS." One long-run goal is to achieve MCS level savings through code adoption.

The proposed extension of the current Surcharge Policy contains some changes in the submission and implementation dates, program name changes, and

language clarification based on our experience in implementing the Policy in 1987-1988. Bonneville proposes that the goals, plan evaluation standards, reporting requirements, and remedies of the current version of the Policy be retained.

[The policy is in effect from the date it is signed by the Administrator until it is either amended or rescinded.]

B. Statutory Direction

Section 4(e)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (Act) provides for developing MCS as part of the Council's Plan. The standards, as described in section 4(f)(1) of the Act, are to include standards applicable to new and existing structures and to utility and government conservation programs. Such standards should reflect geographic and climatic differences and produce all power savings that are cost effective for the region and economically feasible for consumers.

Section 4(f)(2) of the Act provides that the Council may recommend to the Bonneville Administrator the imposition of a surcharge on customers of the Administrator for those portions of their loads within the region that are within States or political subdivisions which have not, or on the Administrator's customers which have not, implemented the standards or other conservation measures that the Administrator determines achieve energy savings comparable to the standards. Finally, section 4(e)(3)(G) of the Act mandates that the Council develop a methodology for calculating the surcharge.

II. Past and Present Surcharge Policy Development Efforts

Part A of this section summarizes past MCS and surcharge actions undertaken by the Council. Part B summarizes Bonneville's past surcharge-related activities. Part C describes the Council's 1987 surcharge recommendation as contained in its Plan Amendment of January 30, 1987.

A. Council Activities to Date—No Changes

On April 27, 1983, the Council adopted its first Plan. As required by the Act, the Council's 1983 Plan contained MCS for newly constructed residential and commercial buildings and for converting existing residential and commercial buildings to electric space heating and conditioning.

In its 1983 Two-Year Action Plan (chapter 10 of the 1983 Plan), the Council identified tasks to be undertaken by Bonneville, the Council, and other regional entities. That Plan mandated

that Bonneville include in its surcharge policy a consistent procedure for certifying compliance with MCS and a procedure for reviewing and evaluating alternative plans.

In accordance with the 1983 Plan, State governments, local governments, or utilities were to adopt and enforce the MCS as building codes or utility service standards by January 1, 1986. Where such standards were not adopted, an alternative plan to achieve comparable savings should have been in place by January 1, 1986. Where neither action had occurred, the Council recommended that the Administrator impose a surcharge.

The Council voted on October 31, 1984, to adopt an amendment which greatly simplified the surcharge calculation. The Council recommended that a 10 percent surcharge be levied on the customer's power bill for that portion of its loads which were not complying with the standard.

On July 26, 1985, the Council proposed to enter rulemaking to amend the MCS. On December 4, 1985, the Council voted to amend that portion of the 1983 Plan dealing with MCS. The amended MCS thermal performance levels for both new residential and new commercial buildings were equivalent to the MCS set forth and amended by the Council in its 1983 Plan. The Council also recommended that Bonneville develop a surcharge policy based on MCS implementation and performance.

In its 1986 Action Plan, the Council identified specific actions that Bonneville should take towards regionwide implementation of the MCS. Bonneville was to: (1) Have utilities submit to Bonneville a plan declaring how they intended to comply with the MCS; (2) design a process to collect utility-specific data on the savings that would be achieved if all buildings were constructed to MCS levels; (3) continue developing and implementing a procedure to measure compliance with the MCS; (4) review alternative plans for achieving compliance with the MCS; and (5) develop a new surcharge policy.

On November 20, 1986, the Council proposed to enter further rulemaking to amend part of its 1986 Plan dealing with MCS and the surcharge. After public comment, the Plan Amendment was published on January 30, 1987. Notice of the Plan Amendment, which included the Council's 1987 MCS, was published in the *Federal Register* on March 26, 1987 (52 FR 9738, March 26, 1987).

B. Bonneville Activities to Date

Bonneville began developing a surcharge policy in early 1984 through a series of informal meetings with State

government, local government, utility, and Council representatives. Bonneville staff informally discussed the various issues that might surround the development of a policy to implement the Council recommendation to impose a surcharge. These informal discussions formed the basis of a *Federal Register* Notice of Intent to Develop a Policy to Implement the Council Recommended Conservation Surcharge. The notice (49 FR 3489, September 4, 1984) was mailed to the public on August 28, 1984.

Bonneville elected to delay publishing a proposed policy until after final Council action amending the surcharge methodology. Public review and comment on the proposed policy took place between March 13, 1985, and May 17, 1985.

Bonneville suspended action on the surcharge policy when the Council entered rulemaking to amend the MCS in the summer of 1985. After the Council amended its MCS recommendation in December 1985, Bonneville developed a revised proposed policy and received public comment on that proposal during July and August 1986. As part of the Administrator's decision about whether or not to finalize the revised proposed surcharge policy, Bonneville undertook an analysis of the cost effectiveness and consumer economic feasibility of the MCS contained in the Council's 1986 Plan. Bonneville concluded that some of the recommended measures were not cost effective, and on December 19, 1986, Bonneville's MCS findings were published.

Based in part on that analysis, the Council entered rulemaking to amend its MCS and surcharge recommendations. In turn, Bonneville suspended the development of a final surcharge policy. Following publication of the Council's Plan Amendment on January 30, 1987, Bonneville undertook a second revision of the proposed surcharge policy.

On May 26, 1987, Bonneville released its proposed surcharge policy for public comment. The comment period closed on July 15, 1987. During the comment period there was one public meeting which was held on June 22, 1987. A number of changes were made in the proposed version of that policy, based on the public comment received. The final policy, issued on August 25, 1987, entitled "Model Conservation Standards Surcharge Policy," was Bonneville's response to Council recommendations to develop a surcharge policy.

[In response to the 1987 Policy, utilities submitted plans for the residential and commercial sectors within their service areas. Those plans covered calendar year 1988. Since the

Policy expires on December 31, 1988, Bonneville is now extending the Policy. This version of the Policy is substantially the same as the current version of the Policy. One difference is that this version does not contain an expiration date. Also, specific submittal dates have now been moved to Appendix 8.]

C. Council's 1987 Surcharge Recommendation—No Changes

The Council's Plan Amendment of January 30, 1987, made several major changes to its 1986 Plan. The most significant change in the surcharge recommendation was a move away from a performance-based surcharge, where utilities could face a surcharge if their performance was poor relative to the performance of other utilities. A summary of the Council's 1987 surcharge recommendation appears below.

1. Residential Surcharge Recommendation

The Council recommended that a 10 percent surcharge be imposed on utilities which do not submit, by a deadline set by Bonneville: (a) An initial plan for implementing the Bonneville/Utility Residential MCS Program; (b) a plan for implementing an alternative program which is approved by Bonneville as being equivalent; or (c) a declaration, approved by Bonneville, that the MCS for residential buildings will be met by building codes. This surcharge would continue in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

2. Commercial Surcharge Recommendation

The Council recommended that a 10 percent surcharge be imposed on utilities which do not submit, by a date set by Bonneville: (1) An initial plan for implementing the Bonneville/Utility Commercial MCS Program; (2) a plan for implementing an alternative program which is approved by Bonneville as equivalent; or (3) a declaration, approved by Bonneville, that the MCS for commercial buildings will be met by building codes at the MCS levels. The Council recommended that the surcharge continue in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

3. Conversion Surcharge Recommendation

The Council's MCS for residential and commercial buildings converting to electric space heating/conditioning stated that State or local governments or

utilities should take actions through codes and/or alternative programs to achieve electric power savings from buildings which convert to electric space heating/conditioning. The savings should be comparable to those savings that would be achieved if each building converting to electric space heating/conditioning were upgraded to include all cost-effective electricity conservation measures. The Council highly recommended this conversion standard, but did not recommend that a surcharge be imposed for failure to adopt the standard.

4. Combined Commercial/Residential Code

One provision of the Plan Amendment allowed for a combined residential/commercial MCS strategy by a utility. This approach allowed for less than MCS program savings to be achieved in one sector as long as the shortfall is recouped in the other sector.

This alternative was to be applicable only to the submission of alternative codes or utility service standards

5. Exemptions

The Council has determined that no exemptions are needed at this time.

6. Federal Loads and Generic MCS

The Council did not make any surcharge recommendation in these areas

III. Surcharge Policy

Section 1: Definitions

A. Administrator—No Change

Administrator of the Bonneville Power Administration or his designated representative

B. Alternative Code—No Change

Codes implemented in the residential and commercial sectors which, in aggregate, achieve total electrical savings at least as large as would have been expected had the Council's illustrative MCS been implemented in the residential and commercial sectors. The Council's illustrative MCS are contained in the Council's plan Amendment of January 30, 1987, as published in the *Federal Register* on March 26, 1987

C. Alternative Utility Plan—No Change

Any plan which either partially or wholly relies on an approach to conservation savings discussed in appendix 2, 4, 5, 6, or 7 of this policy

D. Alternative Utility Program—No Change

For the residential sector, a utility operated MCS support program designed to achieve at least the same level of total expected electrical savings, while complying with the IAQ and ventilation goals, of Bonneville's Super GOOD CENTS program. For the commercial sector, a utility MCS support program designed to promote at least the same MCS measures as contained in the Council's commercial MCS of March 26, 1987, and providing comparable design assistance services as contained in the Bonneville/Utility MCS support program as of the effective date of this policy

E. Customer—No Change

For purposes of this policy, a utility existing in the Pacific Northwest region which purchases firm power from Bonneville under a utility Metered or Computed Requirements Contract, or a utility which purchases firm capacity under a pre-Act contract, or a utility which participates in the Residential Purchase and Sales Agreement/Exchange Transmission Credit Agreement, as a active exchanger or deemer

F. Equivalent Code—No Change

In the residential sector, a code for a specific sector which can be expected to achieve at least the same level of total electrical savings within the jurisdiction as would have been achieved if the utility serving that jurisdiction implemented the Council's residential MCS. For the commercial sector, the Council's MCS of March 26, 1987, will be used

G. Jurisdiction—No Change

For purposes of this policy, any unit of government including Indian Tribes, State and local governments, and municipal corporations

H. Region—No Change

The Pacific Northwest Region, region, or regional means the area consisting of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and any contiguous areas, not in excess of 75 air miles from the area referred to above, which are part of the service area of a rural electric cooperative customer, served by the Administrator on the effective date of the Act, which has a distribution system from which it serves both within and without such region

I. Service Area—No Change

The service area of a utility is that portion of its service territory which is both subject to the Surcharge Policy and to which the utility provides electric power service to the residential or commercial sectors.

J. Total Retail Load—Was Total System Load

The number of firm kilowatt hours (kWhs) sold at retail by a customer during the 12 month period prior to the effective date of this policy

K. Total Residential Load—New

The number of firm kWhs sold at retail by the customer to the residential sector during the 12-month period prior to the effective date of this policy

L. Total Commercial Load—New

The total number of firm kWhs sold at retail by the customer to the commercial sector during the 12-month period prior to the effective date of this policy.

Section 2: Application of the Surcharge Policy

For the residential sector, by the plan submittal date specified in Appendix 8, customers must submit either: [(a) A letter indicating that the approach being used to comply with the Policy will continue to be used to comply with the Policy for the time frame for the submission, (b) a plan to implement the Super GOOD CENTS Program, or (c) an alternative utility program, or utility service standard for Bonneville approval, or (d) a plan certifying that jurisdictions within its service area will implement and enforce the MCS via participation in the Early Adopter Program/Northwest Energy Code Program (EAP/NECP) or adoption of a Bonneville-approved building code. A utility's residential sector plan may contain any combination of these approaches. [Except as provided for in Section 3(A) of this Policy, the utility's entire service area must be covered by some combination of the conservation strategies described in the appendices to this policy.]

[A utility's residential sector plan will be evaluated on the basis of the utility's proposed efforts for the residential sector during the succeeding calendar year and its success with the approach(s) used to comply with the Policy during the previous calendar year.]

Customers who do not implement a Bonneville approved residential MCS plan by the January 1 following their submittal will be subject to a surcharge as calculated in Section 4 of this policy. Customers who have been granted a

grace period, as provided for either in section 3 or the appendix relevant to the utility's conservation strategy, will not face a surcharge until the end of any such period.

For the commercial sector, by the plan implementation date specified in Appendix 8, customers must submit either: [(a) A letter indicating that the approach being used to comply with the Policy will continue to be used to comply with the policy for the timeframe for the submission, (b) a plan to implement Bonneville's Commercial MCS Program, (c) an alternative utility commercial program or utility service standard in the commercial sector, or (d) a plan certifying that jurisdictions within its service area have met the Council's commercial MCS through codes. A utility's commercial sector plan may contain any combination of these approaches. [Except as provided for in Section 3(A), the utility's entire service area must be covered by some combination of the conservation strategies described in the appendices to this policy.]

Customers who have not implemented a Bonneville-approved commercial MCS plan by [the implementation date specified in Appendix 8], are subject to a surcharge, as calculated in Section 4 of this policy. Customers who have been granted a grace period, as provided for in either section 3 or the appendix relevant to the utility's conservation strategy, will not face a surcharge until the end of any such period.

Customers of Bonneville without service areas as defined in this policy, need only submit evidence of their lack of such a service area by the [plan submission date specified in Appendix 8]. This provision exists for those customers who have voluntarily adopted a policy not to serve the residential or commercial sectors, or who are prohibited from serving the residential or commercial sector. If the customer serves one of these two sectors, then this provision will only apply to the one sector not served.

Customers who have neither submitted this information, nor a plan for achieving conservation in these sectors, will be subject to a surcharge on the January 1 following the submittal date.

Each of the appendices to this policy represents a different approach to achieve electrical savings from improved construction practices. These appendices contain more specific submission and evaluation criteria for each of the MCS plan options and are part of this policy.

Once any plan is approved and implemented, Bonneville will assume

that the utility and/or jurisdiction(s) within its service areas will carry out that plan in good faith. During the period for which this policy is in effect, Bonneville reserves the right to revisit any utility's approved plan if Bonneville has reason to believe that the utility has not implemented its plan in good faith. This same provision applies to utilities who rely on jurisdictions to take actions to comply with this policy.

Section 3: Evaluation of Alternative Utility Plans

An alternative utility plan is any plan which relies wholly or in part on an approach to conservation savings presented in Appendix 2, 4, 5, 6, or 7 of this policy. These plans will be evaluated using three criteria: (1) Expected electrical savings, (2) enforcement, and (3) indoor air quality (IAQ) and ventilation. This section applies to all residential sector alternative plans and those commercial sector alternative plans relying on the adoption of commercial codes or commercial service standards.

If Bonneville concludes that the utility's proposed alternative plan cannot be accepted because of its failure to comply with any of the evaluation criteria described below, Bonneville will allow an additional grace period at least as long as Bonneville took to evaluate the utility's initial proposal. Subsequent grace period(s) may be allowed on a case-by-case basis. [Text deleted]

A. Equivalent Electrical Savings

For the residential sector, if a utility is proposing to achieve electrical savings by implementing an alternative residential utility program, Bonneville will use the prospective total electrical savings of its Super GOOD CENTS Program to determine whether the utility's proposed approach will at least meet the appropriate residential electrical savings level for the period of time covered by a utility's plan. Part of the equivalence determination procedure for an alternative residential utility program will involve a comparison between the utility's proposed marketing program and the marketing program they would have pursued had they enrolled in the Super GOOD CENTS program for the period of time [covered by utility's plan.]

Utilities which rely on jurisdictional adoption of residential building codes, or which impose a residential service standard, to achieve additional energy savings in the residential sector will have to provide evidence supporting the claim that the code (or service standard)

can be expected to achieve at least the same level of electrical savings within the jurisdiction (or utility service area, depending on whether a code or service standard approach is used) as would have been achieved if the utility had participated in Bonneville's Super GOOD CENTS Program.

Utilities which rely on jurisdictional adoption of residential and commercial codes (or which impose residential and commercial service standards) to achieve additional savings beyond current practice, may "trade-off" savings achieved in one sector towards a deficit in the other sector. The utility would have to present evidence supporting its claim that the residential and commercial codes, in aggregate, can be expected to achieve at least the same total level of electrical savings as would have been achieved had the jurisdiction adopted the Council's full illustrative commercial and residential MCS for that climate zone. Such sectoral trade-offs are only allowed using enhanced building codes or service standards.

In addition, a utility may obtain equivalent savings by allocating savings achieved by advanced building codes in a jurisdiction (or jurisdictions) within its service area to its entire service area. Such "jurisdictional trade-offs" are only allowed where the utility shows that the full Council MCS level of savings for both sectors are being attained, in aggregate, within the utility's service area.

Finally, those utilities relying on commercial code adoption by a jurisdiction within or covering their service area, or who will impose a commercial service standard, will have to provide evidence supporting their claim that the expected total electrical savings are at least equivalent to what would have been expected had the jurisdiction implemented the Council's illustrative commercial MCS. The only exception to these requirements is for utilities or jurisdictions who adopt a codified version of the Council's MCS. [Text Deleted]

[Submittals in future years may be evaluated using different standards in the event that code advancement occurs and/or the MCS are changed.] For 1989, Bonneville will analyze residential electrical savings from an alternative plan by assuming that, in the absence of MCS, a residence would have been built to one of the following: (a) in Oregon, 1983 energy code; (b) in Washington, 1986 energy code; or (c) in either Idaho or Montana, HUD Minimum Property Standards. Electrical savings in the commercial sector will be evaluated assuming: (a) 1986 code in Oregon and Washington, (b) 1983 National Energy

Code in Montana, and (c) individual jurisdiction codes in Idaho.

All thermal performance evaluations will rely on good engineering practices. Bonneville will be guided by the assumptions, process, and housing prototypes contained in Bonneville's Code Equivalency Determination Procedures.

B. Enforcement

A utility will have more discretion in proposing an approach which will meet the second evaluation criterion—enforcement. Bonneville is recommending that any customer contemplating submission of an alternative utility plan refer to Bonneville's Super GOOD CENTS, Early Adopter/Northwest Energy Code, and Commercial MCS Program descriptions for guidance. Alternative utility plans, excluding an alternative utility commercial program, must contain a requirement for site inspection consistent with the effective date of the surcharge.

Referring to alternative utility programs, a utility will have to provide evidence adequate to assure Bonneville that the energy savings which are being claimed are attributable to the utility's program. Part of that evidence is some enforcement method to assure that the conservation savings the utility is claiming are attributable to the measures they are promoting and inspecting.

C. Indoor Air Quality and Ventilation

[For the residential sector, an alternative utility plan must contain information on how the utility and/or jurisdiction plans to achieve indoor air quality (IAQ) and ventilation rates at least comparable to those achieved in Super GOOD CENTS homes.] The approaches include informing the public about potential health risks from indoor pollutants, testing for selected pollutants, and [installing mitigation measures if certain pollutants are detected to be present in unreasonable levels, and maintaining appropriate levels of ventilation. For residential construction all alternative plans will be examined to determine if the construction practices being promoted or required, when combined with the comparable monitoring, information, and mitigation strategies are likely to assure that IAQ and ventilation rates are comparable to what is achieved in homes constructed to Super GOOD CENTS standards.]

[For the commercial sector, the indoor air quality requirements contained in the Council's Plan Amendment of March 1987 will be required. These same

standards are contained in Bonneville's Energy Smart Design Program and the codified versions of the Council's commercial MCS.]

Section 4: Calculating a Surcharge

Only change: Substitute retail for system in surcharge calculation. Consistent with rates language * * *

A. Not less than 30 days prior to a final decision on the imposition of a residential surcharge, the Administrator shall provide written notice to the customer including determination of the amount of a customer's load not covered by a Bonneville approved MCS residential plan. The amount of the load not covered by a Bonneville-approved MCS residential plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in the appendices to this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.

B. The level of the residential surcharge will be determined by dividing the customer's residential load not covered by a Bonneville-approved MCS residential plan by the customer's total [retail] load, rounding the result to the nearest one-tenth of a percent. This resulting percentage is multiplied by 0.10.

C. Not less than 30 days prior to a final decision on the imposition of a commercial surcharge, the Administrator shall provide written notice to the customer including a determination of the amount of the load not covered by a Bonneville-approved MCS commercial plan. The amount of the load not covered by a Bonneville-approved MCS commercial plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in the appendices to this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.

D. The level of the commercial surcharge will be determined by dividing the customer's commercial load not covered by a Bonneville-approved MCS commercial plan by the customer's total [retail] load, rounding the result to the nearest one-tenth of a percent. This resulting percentage is multiplied by 0.10.

E. The resulting level of the residential or commercial surcharges will be applied to all power purchases and/or exchanges made by the customer under the applicable rate schedules, using the Council's surcharge methodology, and

will be applied subsequent to any other rate adjustments.

F. At no time will a customer simultaneously be assessed a surcharge for failure to comply with the requirements in the residential sector and a surcharge for failure to comply with the requirements in the commercial sector.

G. The customer and other interested parties shall be afforded an opportunity to provide comments regarding the determinations made in sections 4(A) to 4(D). Such comments may be made in writing or orally at a public meeting convened by Bonneville at the request of the customer for this purpose. This public meeting will be held between the time of the written Notice of Intent to surcharge and the final surcharge decision. Included in the Intent to Surcharge will be an initial determination of the fraction of a customer's load subject to the surcharge, based on sections 5(A) to 4(D). Following the receipt and evaluation of comments, the Administrator shall provide written notice to the customer of the final surcharge decision.

H. Beginning with the effective date of a surcharge, the Administrator shall review the findings made in sections 4(A) to 4(D) after the customer, or a jurisdiction served by the customer, has taken an action that affects those findings. Customers may request such review by providing evidence in accordance with this section that the customer or a jurisdiction served by that customer has taken actions subsequent to the effective date of the surcharge.

Section 5: Collecting a Surcharge—No Changes

A. Those customers receiving a final written notice of a load subject to a surcharge shall be billed for the surcharge beginning with the first full billing period following issuance of such notice.

B. Any power purchases or exchanges made on or after the effective date of the surcharge, but before receipt of final notice finding the load subject to a surcharge, may be retroactively billed to the effective date of the surcharge. Such retroactive billing shall collect the retroactive surcharge over a like number of billing periods as elapsed from the effective date of the surcharge to the receipt of final written notice of a surcharge.

C. The level of surcharge is applied to all power purchases and/or exchanges made by the customer under the applicable rate schedules and/or exchanges pursuant to the residential Purchase and Sales Agreement/Exchange Transmission Credit

Agreement, using the Council's surcharge methodology, and is applied subsequent to any other rate adjustment.

1. For firm requirements customers purchasing firm power under the rate schedules subject to the surcharge, the surcharge shall be applied monthly to the billing charges for all power purchased under these rate schedules during the billing period.

2. For customers participating in the residential exchange program, the surcharge shall be applied to the charges for determining the cost to the purchaser of buying firm power from Bonneville under the terms and conditions of the Residential Purchase and Sale Agreement.

3. For those firm requirements customers that both purchase power from Bonneville and participate in the Residential Purchase and Sales Agreement or Exchange Transmission Credit Agreement, the surcharge shall be applied in the following manner to avoid surcharging the same load twice:

a. All power purchases under a utility's Power Sales Contract at rates subject to the surcharge shall include a surcharge, as calculated in the previous section, added to the billing charges for billing period; and,

b. The surcharge applied to the utility's totals exchange load shall be adjusted by multiplying the surcharge level by the percentage of a utility's exchange load served by a utility's own resources. The percentage of exchange load served by a utility's own resources shall be based on the difference between the utility's total retail load and firm power purchases from Bonneville divided by the total retail load and rounded to the nearest one-tenth of a percent. The adjustment surcharge level shall be applied to the charges for determining the cost to the purchaser of buying firm power from Bonneville under the terms and conditions of the Residential Purchase and Sales Agreement or in conformance with Exhibit E of the Exchange Transmission Credit Agreement.

D. If a customer participating in the Residential Exchange is currently in a deemer status, the surcharge shall be accumulated in the account established for this purpose as specified in the respective agreement and shall be included in the obligation a utility must repay prior to receiving a direct payment from Bonneville. If a customer is not in a deemer status, the surcharge shall be included in the determination of the net payment made by Bonneville.

E. The collection of the surcharge shall continue until the Administrator determines that the surcharge is no

longer required under the terms of this policy.

F. Surcharges collected on purchases for periods in which loads are subsequently found to be in compliance with this policy shall be credited to the customer in the first full billing period following final written notice of such finding. Surcharges on loads which are subsequently found not to have been in compliance with the terms of this policy for specified periods shall be billed to the customer in the first full billing period following final written notice of such findings.

Appendix 1: Achieving Electrical Savings By Adopting the Bonneville/Utility MCS Support Program

A. Residential Sector

Bonneville customers opting for this path are assured that enrollment in and subsequent implementation of the Super GOOD CENTS Program throughout their service areas will result in avoidance of a residential surcharge under the current surcharge policy. A customer which is considered a Super GOOD CENTS Program participant, but is only operating that program in a portion of its service area subject to the Policy, will have to take actions to assure that those portions of its service territory not covered by Super GOOD CENTS are covered by some combination of the other conservation strategies presented in these appendices. Those customers which implement the MCS measures contained in the Super GOOD CENTS Program, but do not implement the required incentives and/or implement a different advertising strategy will be treated as filing an Alternative Utility Plan. Those utilities should refer to Appendix 2 for a discussion of that option.

For customers which on average over the last 3 years have had no more than (a) five site-built housing starts, and (b) 2,000 residential accounts will be considered small utilities for purposes of this policy. These utilities will have the option of enrolling in Bonneville's Super GOOD CENTS Program for small utilities, referred to as the Small Utility Program. If a utility believes it qualifies for this option, the utility is encouraged to contact the nearest Bonneville Area or District Office to obtain more information on this program option.

[If a customer is currently relying on Super GOOD CENTS participation to comply with the Policy for the current calendar year, the utility's submittal for the following year can consist of a letter indicating that the utility plans to continue participation in Super GOOD

CENTS for calendar year 1989. Any customer who is either considered a Super GOOD CENTS Program participant for the purposes of this policy, or is proposing to become a program participant, shall provide Bonneville with the following information: (1) total residential load, (2) the portion of the customer's residential load covered by this conservation strategy, and (3) total retail load.]

Otherwise, those customers wishing to enroll in Super GOOD CENTS as a way of avoiding a surcharge must indicate this to Bonneville by [the plan submittal date specified in Appendix 8]. In addition, the utility shall have signed a GOOD CENTS grant agreement by [the implementation date specified in Appendix 8]. Bonneville will consider Super GOOD CENTS Program implementation to have occurred when the utility is engaging in activities, particularly marketing and promotion activities, which can be considered consistent with the utility's agreement. [Text Deleted]

Bonneville will consider offering a grace period if Bonneville has not completed the customer's Super GOOD CENTS grant award by [the implementation date specified in Appendix 8].

Any such grace period will be provided in the event that Bonneville has received a plan by [the submittal date specified in Appendix 8], and the approval delay is due solely to Bonneville internal delay.

B. Commercial Sector

Bonneville customers opting for this path are assured that enrollment in, and subsequent implementation of, Bonneville's Smart Design Program throughout the utility's service area will result in avoiding a commercial surcharge under the current Surcharge Policy. All customers wishing to avoid a surcharge under this path must agree to comply with the IAQ and data reporting requirements and other technical specifications of that program.

[If a customer is currently relying on Smart Design participation to comply with the Policy for the current calendar year, the utility's submittal for following calendar year can consist of a letter indicating that the utility plans to continue participation in Smart Design for the following calendar year.] Any customer who is either considered a program participant, or is proposing to become a program participant, shall provide Bonneville with the following information: (1) Total commercial load, (2) the portion of the customer's commercial load covered by this

conservation strategy, and (3) total [retail] load.

Those new customers going to participate in Smart Design to comply with the policy must agree by [the plan submission date shown in Appendix 8], to enroll in the commercial program and must have enrolled in the program no later than [the plan implementation date shown in Appendix 8]. Bonneville will consider offering a grace period if Bonneville has not completed the customer's grant award by [the plan implementation date]. Any such grace period will be provided in the event that Bonneville had received a plan by [the plan implementation date shown in Appendix 8], and the approval delay is due solely to Bonneville internal delay.

Customers who are either new or continuing Smart Design program participants shall provide Bonneville with the following information: (1) Total commercial load, (2) the portion of the customer's commercial load covered by this conservation strategy, and (3) total [retail] load.

Appendix 2: Achieving Electrical Savings by Adopting an Alternative Utility Program

[If a utility is currently relying on an approved alternative plan to comply with the Policy for the current calendar year, for either or both the residential and commercial sectors, the utility can submit a letter indicating its intentions to continue to rely on that approach for the following calendar year. The date requested in Section A(4) and B(5) shall be submitted at that time.]

A. Residential

An Alternative Utility Residential Program is the customer's proposed approach to meeting the standards of Bonneville's Super GOOD CENTS Program. In order for Bonneville to verify that the proposed program will provide equivalent savings, the information listed below must be submitted.

1. The conservation measures that will be promoted.

2. Analysis of the thermal performance of the conservation measures using Bonneville's input assumptions and Bonneville prototypes. These results will be compared to the Super GOOD CENTS illustrative path for that climate zone, using a WATTSUN analysis. If alternative assumptions or prototypes are used, the analysis should include documentation supporting their use. Acceptance of these alternative assumptions or prototypes, is at the discretion of Bonneville. [Text Deleted]

3. A list of activities to be undertaken to achieve the targeted penetration, such as: Promotion and sales, advertising, incentives (type and level), technical assistance, certification, and any other applicable information. In addition, customers will be required to submit quarterly reports listing the activities undertaken and resources utilized in the marketing effort.

4. A plan showing how the utility will collect and provide the following data to Bonneville by January 30 of the following year:

a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

b. Total number of new electrically-heated homes constructed in the utility's service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

c. Total number of new electrically-heated homes constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

5. Information on how the utility and/or jurisdiction plans to achieve indoor air quality (IAQ) and ventilation rates at least comparable to those achieved in Super GOOD CENTS homes.

6. The customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total [retail] load.

The Alternative Utility Program path is not generally recommended for utilities without experience in operating such programs. An established track record with a well-defined package of measures will be extremely helpful, if not essential, in obtaining Bonneville approval for Alternative Utility Programs. Nonetheless, Bonneville staff will work with customers interested in pursuing this path to help explain the data submission requirements and other complexities involved in this approach.

Because of these complexities, utilities intending to use this path for policy compliance should submit their proposals to Bonneville at the earliest possible date after the final adoption of the surcharge policy. An approved program shall be implemented by [the plan implementation date contained in Appendix 8], unless a grace period, as

provided for in Section 3 of the policy, had been granted.

B. Commercial

An alternative Utility Commercial Program is the customer's proposed approach to meeting the standards of the Bonneville/Utility Commercial MCS Program. A proposed alternative program will be evaluated relative to the: (1) Level and type of activities and services to be offered, (2) method of marketing and performing the services, (3) penetration levels expected for the proposed program activities, and (4) proposed inspection method. The types of design assistance offered in Bonneville's program will be used to evaluate the type of design assistance a utility is proposing to offer in its own commercial MCS design assistance program. The types of design assistance which Bonneville's Commercial MCS Program contains are:

- Promotion of services to commercial customers;
- Screening to determine design assistance needs;
- Depending on the size of the utility and the type of commercial construction, provision of building design handbooks, computer energy modeling, clearinghouse referral, or other building design analysis; and
- Designer recognition for specified levels of energy efficiency.

To perform the necessary review, Bonneville will require the following information:

1. A list of activities and services the customer intends to offer (i.e., modeling, design assistance, design handbook, information services, and training opportunities) to achieve the targeted penetration;
2. Management and oversight consistent with Bonneville practices;
3. A proposed method to submit to Bonneville quarterly reports listing the activities undertaken and resources used in the marketing effort.
4. The customer's total commercial load, (b) the portion of the customer's commercial load covered by this conservation strategy, and (c) total [retail] load.
5. A plan showing how the utility will collect and provide the following data to Bonneville by January 30 of the following year:
 - a. Total number of new commercial buildings (all fuels) constructed in the utility's service area during the past calendar year, listed by Bonneville prototype.
 - b. Total number of new electrically-heated commercial buildings constructed in the utility's service area

during the past calendar year, listed by Bonneville prototype.

c. Total number of new commercial buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, listed by Bonneville prototype.

By the third year of the program, Bonneville is projecting that design assistance services will be offered to 5 percent of the new commercial building constructed in the service areas of utilities participating in Bonneville's Commercial MCS Program. Those customers intending to use this path for surcharge policy compliance shall submit their proposed plan by [the plan submission date shown in Appendix 8], and shall have implemented the approved program no later than [the plan implementation date shown in Appendix 8], unless a grace period, provided for in Section 3 of the policy has been granted.

Appendix 3: Achieving Electrical Savings by Participating in the Early Adopter Program Northwest Energy Code Program

This is a pre-approved path for avoidance of the surcharge if all the jurisdictions within the customer's service area, subject to the surcharge policy, are Early Adopter/Northwest Energy Code Program (EAP/NECP) participants. Except for the one exception noted below, if there are jurisdictions within a customer's service area which are not EAP/NECP participants, then the customer will be subject to a surcharge unless those jurisdictions have implemented a Bonneville-approved building code or the utility has implemented a Bonneville-approved utility program or a Bonneville-approved service standard.

Customers serving areas containing jurisdictions that have adopted advanced building codes may seek to allocate savings achieved by those jurisdictional codes to portions of their service areas not covered by another approved option. This will be permitted only if the utility shows that the full Council MCS level of savings for both sectors are being attained, in aggregate, within that utility's service area. In other words, the utility must achieve at least the same level of total electrical savings as would be achieved had the Council's full commercial and residential MCS been implemented throughout the utility's service areas.

The essential feature of the EAP/NECP is the adoption by a jurisdiction of the MCS contained in the Early Adopter Program description. Additional program features include specific

activities to ensure that no degradation in IAQ results, some form of enforcement method to assure MCS construction, and some data reporting requirements.

[A customer currently relying on jurisdictional participation in the Early Adopter/Northwest Energy Code Program as at least part of its Policy compliance approach for the current calendar year, must submit a letter (the plan submission date shown in Appendix 8), indicating that it wishes to continue to rely on that program participation to comply with the Policy for the timeframe for the submission.]

A. Residential

1. Customers with jurisdictions within their service area who are currently participating in the EAP/NECP, the customer must submit a letter indicating (a) the jurisdictions who are EAP/NECP participants, (b) the award number for each jurisdiction, and (c) a copy of the ordinance adopted by each jurisdiction. In addition, customers must indicate what fraction of its residential load lies within Early Adopting jurisdictions. This information shall be submitted to Bonneville no later than [November 15, of the current calendar year].

2. Any jurisdiction considering adoption shall adopt and enforce the code by [the plan implementation date specified in Appendix 8], for the utility to avoid a surcharge, if the utility will not be operating an approved utility MCS program or residential service standard at that time.

3. Bonneville will consider offering a grace period if Bonneville has not completed the EAP/NECP grant award process by [plan implementation date specified in Appendix 8]. Any such grace period will be considered in the event that Bonneville has received a plan by [plan submission date shown in Appendix 8], and the approval delay is due solely to Bonneville internal delay.

4. The customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total [retail] load.

5. Finally, the utility shall collect and provide to Bonneville the following data by January 30 of the following year:

- a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].
- b. Total number of new electrically-heated homes constructed in the utility's

service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

c. Total number of new electrically-heated homes constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

B. Commercial

1. To avoid a surcharge, customers with jurisdictions within their service area considering enrolling in this program shall notify Bonneville by [the plan submission date specified in Appendix 8], of the jurisdiction's intent to enroll in the program and the jurisdiction shall have officially adopted and be able to enforce the MCS by [the plan implementation date specified in Appendix 8], if the utility is not operating an approved Commercial MCS Program or commercial service standard.

2. Customers with jurisdictions within their service area who are currently participating in the Early Adopter Program, the customer shall provide a copy of Bonneville's letter of approval. In addition, customers shall provide the following information: (a) The customer's total commercial load, (b) the portion of the customer's commercial load covered by this conservation strategy, and (c) total [retail] load.

3. Finally, the utility shall collect and provide to Bonneville by January 30 of the following year by January of the following year:

a. Total number of new commercial buildings (all fuels) constructed in the utility's service area during the past calendar year.

b. Total number of new electrically-heated commercial buildings constructed in the utility's service area during the past calendar year.

c. Total number of new commercial buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, broken out by Bonneville prototype.

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

Those customers wishing to avoid a surcharge under this path shall agree by

[the plan submission date specified in Appendix 8], to enroll in the commercial program and shall have enrolled in the program no later than [the plan implementation date specified in Appendix 8]. Bonneville will consider offering a grace period if Bonneville has not completed its Early Adopter Program grant award process by [implementation date specified in Appendix 8]. Any such grace period will be considered in the event that Bonneville has received a plan by [the plan submission date specified in Appendix 8], and the approval delay is due solely to Bonneville internal delay.

EAP/NWEC application materials can be obtained by contacting your nearest Bonneville Area or District Office.

Appendix 4: Achieving Electrical Savings by Adopting A Codified Version of the MCS

[If a customer is currently relying on jurisdictional participation in the Early Adopter Program as at least part of its Policy compliance approach for of the current calendar year must submit a letter by the plan submission date specified in Appendix 8, indicating that it intends to continue to rely on program participation to comply with the Policy for the following calendar year. At that time, the information requested in Sections A(5) and B(3) shall be submitted.]

A. Residential

1. Several codified versions of the MCS contained in the Early Adopter/Northwest Energy Code Program (EAP/NECP) have been developed. These pre-approved codified versions of the Council's illustrative MCS paths. The options discussed in this appendix pertain to jurisdictions considering adopting, or who have adopted a codified version of the MCS. [Text Deleted]

2. Under this alternative, the customer must submit the codified version of the MCS which any jurisdiction in its service area is proposing for adoption or which has been adopted. The enforcement methods should be specified. [Text Deleted]

3. Finally, the customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total [retail] load.

4. By [the plan submission date specified in Appendix 8], the customer shall submit the above information to Bonneville. The statute or ordinance shall have been adopted and enforced by [the plan implementation date

specified in Appendix 8], unless a grace period, as provided for in Section 3 of the policy, has been granted.

5. In order to comply with the Council MCS reporting requirements as specified in their Plan Amendment, the utility shall collect and provide to Bonneville the following data by January of the following year:

a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

b. Total number of new electrically-heated homes constructed in the utility's service area during the past calendar year [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

c. Total number of new electrically-heated buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan [single-family broken out by site-built, modular, and HUD-code homes, total multi-family].

Customers who are operating a utility program and/or utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

B. Commercial

Under this alternative, the customer must submit the codified version of the MCS which a jurisdiction in its service area is proposing for adoption or which has been adopted. The enforcement methods must be specified. In addition, the customer must indicate what steps the jurisdiction will take to address IAQ and ventilation requirements of Bonneville's EAP/NECP. Finally, the customer shall provide the following information: (1) The customer's total commercial load, (2) the portion of the customer's commercial load covered by this conservation strategy, and (3) total [retail] load.

By [the plan submission date specified in Appendix 8], the customer must submit the above information to Bonneville. The statute or ordinance must be operative no later than [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the policy, has been granted.

Finally, the utility shall collect and provide the following data to Bonneville by January 30 of the following year:

1. Total number of new commercial buildings (all fuels) constructed in the utility's service area during the past calendar year.

2. Total number of new electrically-heated commercial buildings constructed in the utility's service area during the past calendar year.

3. Total number of new commercial buildings constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, broken out by Bonneville prototype.

Appendix 5: Achieving Electrical Savings by Adopting Alternative or Equivalent Building Codes

An alternative code is designed to achieve total electrical savings which, when both sector's savings are combined, are at least as large as the electrical savings expected had the Council's residential and commercial MCS been implemented. A jurisdiction proposing to adopt an alternative code, in which one sector's total electrical savings is expected to exceed the target electrical savings level for that sector, can use those excess electrical savings to offset electrical savings below the target in the other sector. The alternative code path may be pursued by a jurisdiction only when the sum of each sector's savings at least equals the aggregate electrical savings target, which itself is based on the sum of the level of savings for the two sectors calculated using the Council's MCS. Section 3 of this policy discusses how the utility should approach the electrical savings equivalency analysis.

As compared to alternative codes, equivalent codes examine each sector individually. They differ from the pre-approved codified versions mentioned earlier, but provide equivalent savings. An equivalent code must achieve at least the same level of total savings, in each sector separately, as would have been achieved by implementing Bonneville's Super GOOD CENTS Program in the residential sector, and the Council's commercial MCS.

A customer must submit a copy of the alternative or equivalent code which a jurisdiction has proposed. In addition, the customer must indicate how the jurisdiction plans on maintaining IAQ and ventilation at 1983 levels. Finally, the customer shall provide Bonneville with the following information: (a) Total residential load, (b) total commercial load, (c) the portion of the customer's residential load covered by this conservation strategy, (d) the portion of the customer's commercial load covered by this conservation strategy, and (e) total [retail] load. Bonneville staff will attempt to assist customers and jurisdictions wishing to formulate improved building codes.

If an alternative code path is pursued, customers are encouraged to submit their alternative codes at the earliest possible date, but no later than [the plan submission date specified in Appendix 8]. Both codes would have to be implemented and enforced by [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the policy, has been granted.

Customers currently relying on jurisdictional participation in the Early Adopter/Northwest Energy Code Program as at least part of its Policy compliance approach for the current calendar year must submit a letter indicating that it intends to continue to rely on that program participation to comply with the Policy for the following calendar year. At that time, the utility shall submit all available information for the preceding calendar year, on (a) the total number of new residential dwelling constructed, and (b) the number of such dwellings which use electric heat.

For either the equivalent or alternative code approaches, the customer must submit its residential and commercial plans by [the plan submission date specified in Appendix 8]. The codes must be implemented and enforced by [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the Policy, have been granted. Finally, the utility shall collect and provide to Bonneville, by January 30 of the following year:

A. Total new homes and commercial buildings (all fuels) constructed in the utility's service area during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

B. Total new electrically-heated homes and commercial buildings constructed in the utility's service area during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site built], and multi-family).

C. Total new electrically-heated homes and commercial buildings, constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family; for commercial, broken out by Bonneville prototype by square footage).

Customers who are operating a utility program and/or a utility service standard should take all necessary steps

in order to avoid double-counting when reporting the above information.

For a more complete discussion of the data required to evaluate an alternative or equivalent code, refer to the latest version of Bonneville's MCS Code Equivalency Determination Procedures. A copy of these procedures can be obtained by contacting your nearest Bonneville Area or District Office.

Appendix 6: Achieving Electrical Savings by Adopting a Codified Version of the MCS as a Utility Service Standard¹

[If a utility is currently relying on a utility service standard as at least part of its Policy compliance approach for the current calendar year, all the utility need do is submit a letter indicating that it wishes to continue to rely on that approach to comply with the Policy for the following calendar year.]

A. Residential

This path essentially involves adoption of a legally enforceable electric utility hook-up standard for new electrically-heated residential buildings. The customer would simply decline to serve new electrically-heated buildings not built to the standard's specifications. A grace period would be allowed for buildings considered by Bonneville to be "under construction" at the time the standard was adopted. The adoption of a utility service standard may qualify the utility for participation in Bonneville's Early Adopter/Northwest Energy Code Program.

Customers wishing to avoid a surcharge with this approach shall submit a residential plan by [the plan submission date specified in Appendix 8], and the residential service standard shall be adopted and enforced by [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the policy, has been granted. A plan must contain: (1) A copy of the standard to be imposed, (2) how the customer plans on monitoring compliance with the standard, and (3) what IAQ measures and activities will be pursued to at least

¹ Many customers have questioned whether they have legal authority, under State laws, to impose such a service requirement. Bonneville has examined this question under the State laws of Oregon, Washington, Idaho, and Montana and has reached the tentative conclusion that no clear legal impediments exist in these States to conservation-oriented utility service requirements. While Bonneville does not offer legal advice to customers, particularly on questions of State law, Bonneville legal staff are available to discuss these preliminary conclusions with customers and their legal counsel. Any utility considering such a path should obtain independent legal advice on this question.

achieve IAQ and ventilation levels of Super GOOD CENTS construction. Finally, the customer shall provide Bonneville with the following information: (a) Total residential load, (b) the portion of the customer's residential load covered by this conservation strategy, and (c) total [retail] load.

No surcharge will be imposed on any customer relying on such a service requirement which is subsequently enjoined or invalidated by court action. In such an event, the customer will be given a reasonable period of time to choose and implement another option.

Finally, the customer shall submit to Bonneville the following data by January 30 of the following year:

1. Total new homes (all fuels) constructed in the utility's service area during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

2. Total new electrically-heated homes constructed in the utility's service area during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

3. Total new electrically-heated homes constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

B. Commercial

This path essentially involves adopting a legally enforceable electric utility hook-up standard for new electrically-heated commercial buildings at least equal to the Council's commercial MCS. The customer would simply decline to serve new electrically-heated buildings not built to the standard's specifications. A grace period would be allowed for buildings considered by Bonneville to be "under construction" at the time the standard was adopted.

Customers wishing to avoid a surcharge with this approach shall submit a Commercial plan by [the plan submission date specified in Appendix 8], and the commercial service standard shall be adopted and enforced by [the plan implementation date specified in Appendix 8], unless a grace period, as provided for in Section 3 of the policy, has been granted. A plan must contain: (1) A copy of the standard to be imposed, and (2) indicate how the customer plans on monitoring compliance with the standard. Finally, the customer shall provide the following information: (1) The customer's total commercial load, (2) the portion of the customer's commercial load covered by this conservation strategy, and (3) total

[retail] load. No surcharge will be imposed on any customer relying on such a service requirement which is subsequently enjoined or invalidated by court action. In such an event, the customer will be given a reasonable period of time to choose and implement another option.

Finally, the customer shall submit to Bonneville the following data by January 30 of the following year:

1. Total new commercial buildings (all fuels) constructed in the utility's service area during the past calendar year;

2. Total new electrically-heated commercial buildings constructed in the utility's service area during the past calendar year (broken out by Bonneville prototype).

3. Total new electrically-heated commercial buildings, constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (broken out by Bonneville prototype).

Appendix 7: Achieving Electrical Savings by Adopting an Alternative or Equivalent Utility Service Standard

This path is actually two alternative paths. If an equivalent utility service standard approach is pursued, a customer may choose to adopt a utility service standard which is not one of the codified versions, but which is expected to achieve at least the same level of total electrical savings in each sector separately as would have been achieved by adopting Bonneville's Super GOOD CENTS Program in the residential sector, and the Council's MCS for the commercial sector. Alternatively, the customer may choose to adopt utility service standards for the residential and commercial sectors which when taken together, achieves at least the same level of total electrical savings as would have been achieved had the customer adopted the Council's commercial and residential MCS. This latter option is referred to as an alternative utility service standard.

If a utility is currently relying on a utility service standard as at least part of its Policy compliance approach for of the current calendar year, all the utility need do is submit a letter indicating that it wishes to continue to rely on that approach to comply with the Policy for the following calendar year.

If an alternative or equivalent utility service standard approach is pursued, a customer shall submit to Bonneville (1) a copy of the proposed service standard(s), (2) a description of the enforcement method(s), (3) a description of the methods used to at least maintain IAQ and ventilation at 1983 levels, and (4) a copy of the analysis used to verify that the proposed service standard(s) will achieve the required total electrical savings. The customer shall also provide Bonneville with the following

information: (1) Total residential load, (2) total commercial load, (3) the portion of the customer's residential load covered by this conservation strategy, (4) the portion of the customer's commercial load covered by this conservation strategy, and (5) total [retail] load. Bonneville staff will attempt to assist customers and jurisdictions wishing to formulate improved building codes. This material shall be submitted by [the plan submission date specified in Appendix 8], and both service standards shall be adopted and enforced by [the plan implementation date specified in Appendix 8]. [Text Deleted]

Finally, the customer shall submit to Bonneville the following data by January 30 of the following year:

A. Total new homes and commercial buildings (all fuels) constructed in the utility's service area during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

B. Total new electrically-heated homes and commercial buildings constructed in the utility's service areas during the past calendar year (for residential, broken out by single-family [modular, HUD-code homes, site-built], and multi-family).

C. Total new electrically-heated homes and commercial buildings, constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (for residential, broken out by single-family [modular, HUD-code homes, site-built]; for commercial, broken out by Bonneville prototype). For a detailed description of the data required to evaluate an alternative or equivalent code, and the evaluation criteria, the customer and/or jurisdiction is advised to consult the latest version of Bonneville's MCS Code Equivalency Determination Procedures. A copy of these procedures can be obtained by contacting your local Bonneville Area or District Office.

Appendix 8: Submittal and Compliance Schedule for MCS Surcharge

Customers are to submit plans for both the residential and commercial sectors by the plan submission date of November 15, 1988. Those plans should conform with the requirements of the particular approach the customer is using for each sector, as indicated in the appropriate appendix to this policy. The plan implementation date is January 1, 1989.

James J. Jura,
Administrator, Bonneville Power
Administration.

[FR Doc. 88-18780 Filed 8-16-88; 9:32 am]

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